

ECCLESIASTICAL COURTS COMMISSION.

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REPORT OF THE COMMISSIONERS  
APPOINTED TO INQUIRE INTO  
THE CONSTITUTION AND WORKING OF  
THE ECCLESIASTICAL COURTS,

WITH  
MINUTES OF PROCEEDINGS, EVIDENCE, RETURNS,  
ABSTRACTS, HISTORICAL AND OTHER  
APPENDICES, &c.

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**Vol. I.**

CONTAINING

The Commission.—The Report.—Minutes of Proceedings.—  
Historical Appendices.

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Presented to both Houses of Parliament by Command of Her Majesty.

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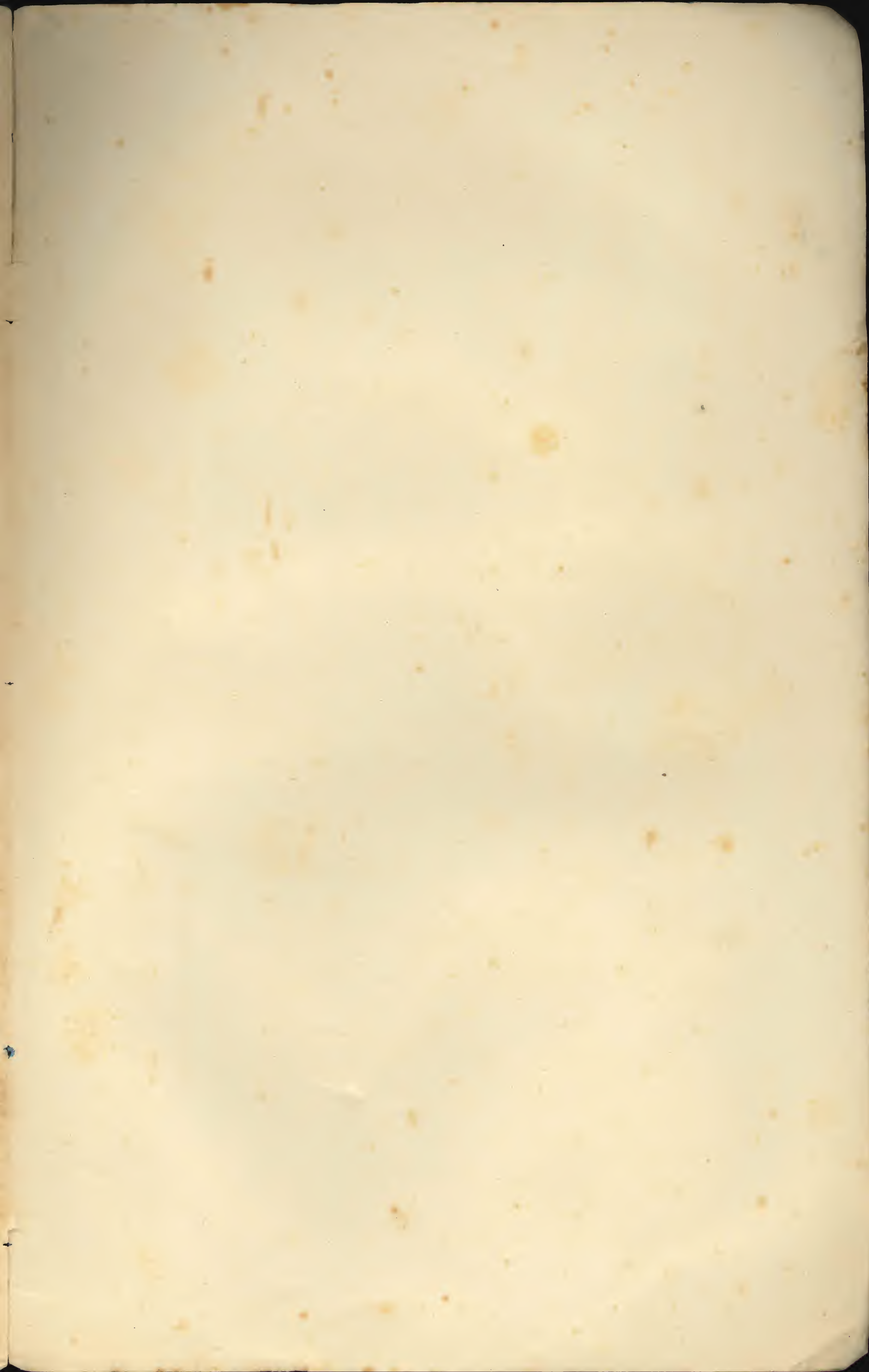
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1883.

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## THE COMMISSION.

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### *VICTORIA, R.*

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Most Reverend Father in God, Our Right trusty and Right entirely-beloved Councillor Archibald Campbell, Archbishop of Canterbury; the Most Reverend Father in God, Our Right trusty and Right entirely-beloved Councillor William, Archbishop of York; Our Right trusty and entirely-beloved Cousin John Alexander, Marquess of Bath; Our Right trusty and Right well-beloved Cousin and Councillor William Reginald, Earl of Devon; Our Right trusty and Right well-beloved Cousin Henry Thomas, Earl of Chichester; the Right Reverend Father in God Edward Harold, Bishop of Winchester; the Right Reverend Father in God John Fielder, Bishop of Oxford; the Right Reverend Father in God Edward White, Bishop of Truro; Our Right trusty and well-beloved Councillor James Plaisted, Baron Penzance, Judge of the Court of Arches; Our Right trusty and well-beloved Councillor Frederic, Baron Blachford, Knight Commander of Our Most Distinguished Order of St. Michael and St. George; Our Right trusty and well-beloved Councillor John Duke, Baron Coleridge, Lord Chief Justice of England; Our Right trusty and well-beloved Councillor Sir Robert Joseph Phillimore, Knight, Doctor of Civil Law, and one of the Judges of the Probate, Divorce, and Admiralty Division of Our High Court of Justice; Our Right trusty and well-beloved Councillor Sir Richard Assheton Cross, Knight Grand Cross of Our Most Honourable Order of the Bath, Doctor of Civil Law; Our trusty and well-beloved Sir Walter Charles James, Baronet; Our trusty and well-beloved William Charles Lake, Doctor in Divinity, Dean of Our Cathedral Church of Durham; Our trusty and well-beloved John James Stewart Perowne, Doctor in Divinity, Dean of Our Cathedral Church of Peterborough; Our trusty and well-beloved Brooke Foss Westcott, Doctor in Divinity, Canon of Our Cathedral Church of Peterborough, Regius Professor of Divinity in Our University of Cambridge; Our trusty and well-beloved William Stubbs, Doctor in Divinity, Canon of Our Cathedral Church of St. Paul, London, Regius Professor of Modern History in Our University of Oxford; Our trusty and well-beloved James Parker Deane, Esq., Doctor of Civil Law, one of Our Counsel Learned in the Law; Our trusty and well-beloved Edward Augustus Freeman, Esq., Doctor of Civil Law; Our trusty and well-beloved Thomas Espinell Espin, Clerk, Bachelor in Divinity; Our trusty and well-beloved Alexander Colvin Ainslie, Clerk, Master of Arts; Our trusty and well-beloved Arthur Charles, Esq., one of Our Counsel Learned in the Law; Our trusty and well-beloved Francis Henry Jeune, Esq., Barrister-at-Law; and Our trusty and well-beloved Samuel Whitbread, Esq., Greeting!

Whereas an Humble Address has been presented unto Us by the Lords Spiritual and Temporal in Parliament assembled, praying that we will be graciously pleased to appoint a Royal Commission to inquire into the constitution and working of the Ecclesiastical Courts, as created or modified under the Reformation Statutes of the 24th and 25th years of King Henry VIII., and any subsequent Acts:

Now know ye that We, reposing great trust and confidence in your knowledge and ability, have nominated, constituted, and appointed, and do by these presents nominate, constitute, and appoint you, the said Archibald Campbell, Archbishop of Canterbury; William, Archbishop of York; John Alexander, Marquess of Bath; William Reginald, Earl of Devon; Henry Thomas, Earl of Chichester; Edward Harold, Bishop of Winchester; John Fielder, Bishop of Oxford; Edward White, Bishop of Truro; James



Plaisted, Baron Penzance; Frederic, Baron Blachford; John Duke, Baron Coleridge; Sir Robert Joseph Phillimore, Sir Richard Assheton Cross, Sir Walter Charles James, William Charles Lake, John James Stewart Perowne, Brooke Foss Westcott, William Stubbs, James Parker Deane, Edward Augustus Freeman, Thomas Espinell Espin, Alexander Colvin Ainslie, Arthur Charles, Francis Henry Jeune, and Samuel Whitbread, to be Our Commissioners for the purpose aforesaid.

And for the better enabling you to form a sound judgment on the premises We do hereby authorise and empower you, or any seven or more of you, to call before you, or any seven or more of you, all such persons as you may judge most competent, by reason of their situation, knowledge, or experience to afford you correct information on the subject of this Our Commission, and also to call for, have access to, and examine all such official books, documents, and records as may afford you the fullest information on the subject. And to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And We do by these presents will and ordain that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any seven or more of you, may from time to time proceed in the execution thereof and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And Our further will and pleasure is that you do, with as little delay as possible, report to Us, under your hands and seals, or under the hands and seals of any seven or more of you, your opinion upon the matter herein submitted for your consideration.

And for your assistance in the execution of this Our Commission, We have made choice of Our trusty and well-beloved Alfred Bray Kempe, Esq., Barrister-at-Law, to be Secretary to this Our Commission.

Given at Our Court at *St. James's*, the sixteenth day of *May*, one thousand eight hundred and eighty-one, in the forty-fourth year of Our reign.

By Her Majesty's Command,  
W. V. HARCOURT.



## THE REPORT.

Your Majesty having been pleased to issue a Commission directing us to “inquire into the constitution and working of the Ecclesiastical Courts, as created or modified under the Reformation Statutes of the 24th and 25th Henry VIII., and any subsequent statutes,” and with as little delay as possible to report to Your Majesty thereon.

TERMS  
OF THE  
COMMISSION.

We, Your Majesty's Commissioners, who have hereunto set our hands and seals, do humbly certify to Your Majesty that we have with all diligence inquired into the matters embraced by Your Majesty's Commission.

It was our first duty to ascertain the extent and causes of the dissatisfaction which was understood to exist in regard to these matters, and for this purpose we examined a large number of witnesses, who represented the various opinions current in the English Church, who were practically conversant with the conduct of ecclesiastical litigation, or who had paid special attention to the historical and constitutional relations of Church and State in this and other countries.

EVIDENCE  
TAKEN.

We proceed to state as briefly as possible the main objections to the existing state of things which were put before us. As to many of the objections, more particularly those dealing with appeals to the Crown and the constitution of the courts, there were decided expressions of opinion on the part of some that no changes, or merely slight changes, were required or would be justifiable; while as to others which were directed against the complexity, slowness, and inordinate expense of the present procedure, and the consequent difficulty in enforcing obedience to the law, there was a practical agreement among all those who spoke on the subject as to the necessity for extensive reforms.

Objections  
raised.

1. Objections to which great importance was attached by some witnesses who gave evidence before us had reference to the constitution and working of the body which adjudicates upon appeals to the Crown. It was alleged that the decisions given by the Judicial Committee of the Privy Council which now hears these appeals have been dictated by policy; that they have been rigid in the enforcement of a particular standard of ritual conformity; lax in reproving heresy; and opposed to clear principles of theological interpretation. It was contended that the character thus attributed to these decisions was the natural result of the system under which they are pronounced. The objections which were raised to this system, in some cases by many witnesses in others by a smaller number, were that it fosters the idea that considerations of policy rather than of pure law are to regulate the advice given to Your Majesty by the members of the Judicial Committee; that it allows no expression of differences of opinion if entertained by those members; that it intrusts the interpretation of the formularies, the exposition of the traditions, and the infliction of the spiritual censures of the Church to persons of no theological education; that it grants no representation to the voice of the Church except in the utterances of episcopal assessors which may be totally disregarded by the lay tribunal alone acquainted with their purport; and that it commits the composition of that tribunal to the absolute discretion of the high officer of State entrusted with the power of summoning to the board such members of the Judicial Committee as he thinks fit to nominate.

1. Appeals to  
the Crown.\*

These objections were presented as having greater force because such appeals dealt not only with civil rights but also with the doctrine and worship of the Church, and it was contended that the decisions pronounced, and the reasons given for those decisions, were taken as authoritative standards of belief and practice.

It was further contended† that as an historical fact the transference to the Crown at the Reformation of all appeals which had previously gone to Rome was never intended to give to the Crown the consideration of questions of heresy; that such questions had not gone on appeal to Rome, and that they were not heard in courts, properly so called, but in the synods of the realm, and were finally settled there. There is no evidence, it was said by some witnesses, that the Court of Delegates, (to which eccle-

\* Analytical Subject Index of Evidence, Vol. II., p. 545. Title, *The Court of Final Appeal*.

† Index, Vol. II., p. 537. Title, *The Reformation Statutes*.



siastical appeals were referred by the Crown from the Reformation to the establishment of the Judicial Committee,) decided doctrinal cases except in one or two questionable instances, and at a period when the proper procedure was forgotten, synods having fallen into disuse.

2. Constitu-  
tion of courts.  
*The appoint-  
ment of the  
Dean of the  
Arches, &c.  
under the  
Public Wor-  
ship Regula-  
tion Act,  
1874.\**

2. Objections were also urged against certain points in the constitution of the existing ecclesiastical courts. It was urged that the judges are properly the representatives of the Bishops and Archbishops, and that, until the year 1874, every vacancy was, in the case of a Chancellor, filled up by the Bishop of the diocese, and in the cases of the Dean of the Arches and the Official Principal of York, by the Archbishops of Canterbury and York respectively. But it was said that an entirely new and unconstitutional principle was introduced by the Public Worship Regulation Act, 1874. By that Act the two Primates were required to select the same Official Principal, and their choice was to be subject to the approval of the Crown. It was contended that by these innovations the choice of the Archbishops was unduly limited and unconstitutionally controlled, and that, by the further provision by which if the two Archbishops should be unable to agree in the choice of a fit person the appointment should fall to the Crown, the principal judge of the Church of England, the representative of the Archbishops, clothed with authority to deprive, was divested of his spiritual character and treated simply as an officer of the State. It was also pointed out that the present Dean of the Arches appeared to hold this view of his position, as on assuming office he had not taken the accustomed oaths, or complied with other ecclesiastical conditions which had been fulfilled by his predecessors.

*Personal  
jurisdiction  
of Bishops.†*

There were but few dissentients from the view, which was earnestly expressed, that in cases of doctrine and ritual at any rate, the Bishops and Archbishops should in future preside in person in their courts. It was insisted that their presence would command obedience, which would be and had been refused to lay Officials.

*Synodical  
trials.‡*

It was also regarded as essential that, in all trials of clerks the sentence should be pronounced by the Bishop in open court, whether he had tried the case himself or not.

By those more especially who put forward the contention that in appeals to the Crown only the temporal questions involved should be dealt with, it was said to be desirable that cases of heresy and breach of ritual should be tried in synod, the Bishops being assisted by their presbyters and the Archbishops by their com-provincial Bishops.

*Legislation  
on Eccle-  
siastical  
Judicature.§*

Much stress was laid on the departure from constitutional principles said to be involved in the mode in which changes in ecclesiastical judicature have been effected. It was insisted that there was grave cause for complaint in the fact that those changes were made by Parliament alone, without any reference to the voice of the Church, as expressed by the Convocations of Canterbury and York. While it was admitted that, since the exercise of coercive jurisdiction is derived from the State, the State must determine under what conditions civil privileges shall be affected by the decisions of the Ecclesiastical Courts, it was claimed that, as those courts are, and were recognised by the Reformation Statutes to be, courts of the Church as distinguished from the State, the Church had the right formally to express dissent or approval before any measures touching them were passed into law.

3. Proce-  
dure.  
*Treatment  
of Breach  
of Ritual,  
Heresy,  
and Mis-  
conduct.||*

3. The third class of objections concerned procedure. The disciplinary matters which come before the ecclesiastical courts relate either to ritual, doctrine, or morals. It seemed to be generally considered undesirable that the treatment of moral offences should be of the same character as that applied in cases of ritual or doctrine, inasmuch as it is obvious that very different considerations are involved in the two cases.

Whether any like distinction in treatment between doctrine and ritual is possible or advisable, opinions differed considerably. It was almost universally agreed that heresy should in all cases be the subject of some sort of judicial investigation, either before a court or before a synod; but there were different views as to the proper mode of treating questions of ceremonial. While some would deal with them as with cases of heresy others were desirous to keep them, if possible, out of the courts altogether, either by giving to each Bishop a discretionary power as to the ritual which should be used in any of the churches of his diocese, or by other expedients.

\* Index, Vol. II., p. 547. Title, *The Appointment, &c.*

† Index, Vol. II., p. 547. Titles, *Personal Jurisdiction of Archbishops, Personal Jurisdiction of Bishops, and p. 549, Sentence.*

‡ Index, Vol. II., p. 546. Title, *Synods.*

§ See Index, Vol. II., p. 545. Titles, *How Changes are to be effected and Spiritual Sanction.*

|| Index, Vol. II., p. 548. Titles, *Procedure in Doctrinal Cases, Procedure in Cases of Ritual, Procedure in Cases of Immorality, and THE PUBLIC WORSHIP REGULATION ACT.*



Further, it was stated that many persons were of opinion that legislation (such as the Public Worship Regulation Act, 1874), dealing with ritual offences only, and passing by other grave departures from the law, was unwise and objectionable. Attention was also directed to the fact that in its actual working the Act had been applied to repress alleged excesses of ritual and not to enforce the observance of plain directions of the rubrics.

Under the Church Discipline Act, 1840, which regulates the procedure in all cases, except such (being ritual cases) as are tried by the additional process provided by the Public Worship Regulation Act, 1874, at the outset the Bishop appoints a commission, consisting of five persons, of whom one must be either his vicar-general his archdeacon or a rural dean, to investigate the matter, and report to him whether there is a *prima facie* case. This commission goes into the whole case, takes evidence on oath and hears counsel. The evidence before us as to the desirability of retaining this process was somewhat conflicting, but the larger proportion of the witnesses who spoke on the subject regarded it as useless and expensive.

*Commissions of Inquiry.\**

The power possessed by a Bishop of refusing to assent to the institution of suits in his court for the correction of the clerks in his diocese was the subject of animadversion. It was urged that there were no just reasons why the unfettered right of prosecution which was assumed to exist in the case of civil offences should be withheld in the case of ecclesiastical offences; that a power of stopping suits before they come before a tribunal could not be properly exercised, as until charges had been made the subject of a judicial investigation, their importance could not be estimated; and that the possession of such a power must operate injuriously on the influence of a bishop, as he might be led under peculiar circumstances to sanction acts which were clearly illegal. Opinions were, however, much divided on the question, some desiring to retain the power, some to abolish it, while others thought that the power should be preserved, but should be surrounded by certain safeguards.

*Bishop's Assent to Suits.†*

There was a like division of opinion as to whether the courts should be open to any man who desired to commence a suit against a clerk, or whether further restrictions than those introduced by the Public Worship Regulation Act, 1874, which confined the right to proceed to either—

*Promoters.‡*

- (a.) An archdeacon of the archdeaconry of the clerk,
  - (b.) or a churchwarden of his parish,
  - (c.) or three parishioners of that parish,
- should be imposed.

The present procedure of the courts was unanimously regarded as antiquated, cumbersome, expensive, and unsuited to the requirements of the present day. The practice of treating ritual and doctrinal suits as criminal proceedings, and thus enabling an accused clerk to absent himself and take advantage of every slip on the part of a promoter, was said to have led to delay, expense, and substantial injustice. These points were strongly urged by those who were more or less satisfied with the present constitution of the courts. It was contended that, owing to the "occult" and complex character of the procedure, the number of technicalities involved, and the necessity for strictly adhering to the prescribing forms in order to avoid the danger of prohibitions by the temporal courts, together with the enormous costs and grave delays which were thereby occasioned; it was extremely difficult to bring suits for the restraint of unauthorised changes to an effective result.

*Practice.§*

The procedure as to the granting of faculties was said to be susceptible of considerable improvement, especially in certain dioceses where grave irregularities were reported to exist.

*Faculties.||*

It was said that in many cases of public scandal arising from the immorality of a clerk, no one is willing to incur the trouble and expense involved in undertaking the prosecution of a suit against the offender. In such cases the duty devolves upon the Bishop, and it was submitted that it was a great hardship that he should be put to heavy costs by the discharge of a duty of great public importance.

*Bishop's Costs.¶*

The imprisonment of clerks for refusing to obey the orders of ecclesiastical courts was generally disapproved, though some witnesses regarded it as inevitable if disobedience were persistent.

*Imprisonment.\*\**

\* Index, Vol. II., p. 546. Title, *Commissions of Inquiry*.

† Index, Vol. II., p. 547. Title, *Bishop's Assent to Suits*.

‡ Index, Vol. II., p. 548. Title, *Promoters*.

§ Index, Vol. II., pp. 548–550. Titles under head PROCEDURE.

|| Index, Vol. II., pp. 543, 549. Title, *Faculties*.

¶ Index, Vol. II., p. 550. Title, *Bishop's Costs*.

\*\* Index, Vol. II., p. 550. Title, *Imprisonment*.



*Trial of Bishops.\**

Our attention was called to the difficulty which would arise in the present day if it became necessary to try an Archbishop or Bishop for an ecclesiastical offence. It was stated that there is no tribunal capable of taking cognisance of such cases.

*Isle of Man.†*

It may be added that at the request of the Lieutenant-Governor of the Isle of Man we received evidence as to the ecclesiastical courts in that island.

*The Channel Islands.*

Considerations similar to those laid before us in the case of the Isle of Man were represented by members of our own body conversant with the matter, as applicable to the Channel Islands.

*PROCEDURE IN OTHER CHURCHES.*

In considering the various objections and recommendations which were brought forward in regard to the constitution and working of the Ecclesiastical Courts in England, it appeared to us that we might derive important assistance towards the fulfilment of our work from the experience of other countries, having respect both to those in which particular churches stand in definite connexion with the civil government, and also to those in which churches have been organised with the most complete freedom and independence.

With a view to obtaining the requisite information we framed a series of questions to which answers were obtained, partly through the most ready and effective co-operation of Your Majesty's Foreign Office and partly through the help of representatives of the different bodies on whose ecclesiastical procedure we wished to be informed.

These answers are printed at length as an Appendix,‡ together with a complete analysis of their contents; but it seems to us to be desirable to call attention to some of the facts which they describe, both as presenting modes of procedure which have been held elsewhere to be just and efficient, and also as showing it to be unavoidable that matters which are under one aspect purely ecclesiastical should sometimes fall under the cognisance of the Civil Courts.

There are three subjects which seem specially to require notice:

- (1.) The constitution of the Ecclesiastical Courts.
- (2.) The possible interference of the Civil with the Ecclesiastical Courts.
- (3.) The mode of enforcing the civil consequences of an ecclesiastical judgment.

We propose to give illustrations of these subjects from the usage both of representative Churches not in communion with the Church of England and of non-established Anglican Churches.

1. Churches not in communion with the Church of England.  
*Established Church of Scotland.*

The constitution and authority of the Established Ecclesiastical Courts in Scotland was recognised and confirmed by the Act appended to the Treaty of Union (1707), in which it is provided that "... the Presbyterian Church Government and Discipline; (that is to say,) the Government of the Church by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies ... shall remain and continue unalterable ...".

The Court of First Instance§ is the Presbytery, a permanent body composed of the ministers of the different parishes within defined bounds and of elders elected by each Kirk Session. The Kirk Session, which is the primary element of the ecclesiastical system, is established in each parish, and consists of the parish minister as chairman and a certain number of laymen specially ordained to the eldership.

An appeal lies from the Presbytery to the Provincial Synod of the district within the bounds of which the Presbytery is situated. This Synod consists of representatives of the different Presbyteries included in the district, each Kirk Session sending its parish minister and one or more elders.

The ultimate appeal lies to the General Assembly, which is composed of representatives elected annually by every Presbytery in the Church, by the four universities, and by the royal burghs. It consists of about 440 members in the proportion of about 260 ministers to 180 elders. A Lord Commissioner, as representing the Crown, takes part in the meetings of the General Assembly, but the constitutional limits of his power are not exactly determined. When the Lord Commissioner dissolved the General Assembly in 1692, without naming another day for its meeting, he was met by a solemn protest from the Moderator, who affirmed "that the office-bearers in the House of God have a spiritual intrinsic power from Jesus Christ, the only Head of the Church, to meet in assemblies about the affairs thereof, the necessity of

\* Index, Vol. II., p. 549. Title, *Trial of Bishops*.

† Index, Vol. II., p. 551. Title, *Isle of Man*.

‡ Vol. II., pp. 552-657. The statements in the text are based upon these answers, unless other references are given.

§ Vol. II., p. 599ff.



"the same being first represented to the magistrate." The Assembly then fixed a day for their meeting. They did not meet on that day; but having been summoned by the King's writ, they met in 1694, and continued to sit regularly during the rest of the reign of William III.\*

The Church Courts in Scotland have no executive power of their own for enforcing the civil consequences of their judgments; but the judgments can be enforced by application to the Civil Court, which would, as a matter of course, give effect to them. And it is believed that in no case would the Civil Court entertain an appeal from a judgment of an Ecclesiastical Court on a question of doctrine, or enter on an examination of the soundness of such a judgment before enforcing its civil consequences; or, when a case is clearly within the province of the Church Courts, interfere upon an allegation that the forms of ecclesiastical procedure had not been observed.†

At the same time it is allowed that cases might arise of such flagrant departure from the "form and purity of worship" established by the Act of 1707 as might be held to constitute a violation of the provisions of that Act, and consequently to justify, on the failure to obtain redress from the General Assembly, an appeal to the Civil Court.

In Russia complaints against ecclesiastics are brought in the first place to the Bishop.‡ His preliminary decision is examined by his Consistorial Court, which constitutes a Court of First Instance, and their decision, together with the opinion of the minority of the court, if the court is not unanimous, is submitted to the Bishop for confirmation. The Consistorial Courts consist of three to five ecclesiastics appointed by the Holy Synod with a staff of lay officials.

*The Eastern Church in Russia.*

The Consistorial Courts appear to have complete and independent jurisdiction over the cases which fall within their cognisance. Their punishments "partake more of a moral character." Contumacy against their decisions is visited by temporary suspension or consignment to a monastery until repentance.

If a priest has been sentenced to deprivation he can appeal either to the Consistorial Court which decided the case or directly to the Holy Synod. A sentence of degradation from the ministry requires to be confirmed by the Synod.§

The Holy Synod has supreme authority, under the Czar, over all ecclesiastical affairs. It was constituted in 1721 by Peter the Great to exercise the authority and enjoy the privileges before vested in the patriarch. The language of the Emperor's Edict is as follows:—"We appoint a Spiritual College, *i.e.*, a Spiritual Synodical Administration, which is authorised to rectify, according to the Regulation here following, all spiritual affairs throughout the Russian Church. And we require all our faithful subjects of every rank and condition, Spiritual and Temporal, to account this administration powerful and authoritative . . . . We constitute Members of this Spiritual College, as is here specified, one President, two Vice-Presidents, four Counsellors, four Assessors."|| The number of members has been since varied. It was fixed at six in 1763, and at seven in 1818, with "powers to add to their number."¶

The judgment when finally pronounced is carried into execution by the Consistorial Court.

The peculiarity of the Russian system lies in the exceptional position of the Czar, who is personally supreme over all civil and ecclesiastical procedure. The members of the Holy Synod are chosen and appointed by him, and his relation to it does not appear to be defined by any legal instrument. The Czar exercises in some cases

\* Grub's *Ecclesiastical History of Scotland*, iii., pp. 330, 332, 338.

† "The Ecclesiastical Courts have an exclusive jurisdiction in proper ecclesiastical cases, and we are no more competent to review the proceedings of such courts on preliminary or incidental points than their final judgments on their merits." (Judgment of Lord Cuninghame). "I should no more think of disturbing a decision of the Supreme Ecclesiastical Courts in an ecclesiastical matter than I should think of disturbing the decisions of the Courts of Justiciary or Exchequer in a matter falling within their respective provinces" (Judgment of Lord Ivory), *Lockhart v. Presbytery of Deer*, 1851; *Leading Ecclesiastical Cases in Scotland*, pp. 34, 36.

‡ Vol. II., pp. 611ff.

§ *Notes on Church Government in Russia*. London, 1867, p. 19.

|| *The present State . . . of the Church of Russia . . .* By T. Consett, London, 1729, pp. 4f. The original number of the Synod is often said to be 12. This number must include the representative of the Emperor, who is not a member. After the Holy Synod was constituted (Jan. 1721) the Emperor (Sept. 1721) communicated on the subject with the Patriarch of Constantinople; and in 1723 the Patriarch Jeremiah wrote to the Synod: "Our humility . . . doth legalise . . . the Synod instituted in the holy and great kingdom of Russia by our well-beloved Czar of all Moscovia . . .". (*Notes on Church Government in Russia*, p. 8.)

¶ *Notes on Church Government in Russia*, p. 8.



directly powers which properly belong to an ecclesiastical tribunal,\* but generally he acts through the Synod. "In the Synod he is represented by a high official (Chief Procurator), who has a negative on all its resolutions till laid before the Emperor,"† and this officer, though he has theoretically no voice in the deliberations of the Synod and no vote, practically exercises a powerful influence upon its decisions. The Synod cannot in fact give effect to any of its decisions without the Emperor's consent, given through his representative.

The extent and character of the Imperial interference with the wishes of the Synod at any time might, no doubt, be determined in some degree by public opinion within the Russian Empire, and in grave cases by the expressed or expected judgment of the four Eastern Patriarchs; but in the Empire itself there is no constitutional check on such an exercise of the Czar's personal authority as that by which Peter the Great abolished the patriarchal power in Russia. The indefinite relation of the Ecclesiastical to the Imperial power, determined only by general expressions of respect for early precedents, corresponds with the peculiar circumstances of the nation. The Czar is necessarily unwilling to limit his own authority, and the Synod may shrink from the danger of being formally forced to accept a position inconsistent with spiritual freedom.

*The Older  
Provinces  
of Prussia.*

In the older provinces of the kingdom of Prussia‡ the eight provincial Consistories, each consisting partly of ecclesiastical and partly of legal members from 6 to 14 in number, with a legal president, form Courts of First Instance. If the charge be one of false doctrine, the members of the Provincial Synodal Committee, a body of ecclesiastics and laymen, freely elected from the Synods of each province for three years, are joined to the Consistory with equal rights of voting.

An appeal from the judgment of the Consistory lies to the Evangelical Supreme Council, a mixed body of ecclesiastics and laymen, by which a final decision is given.

There is no appeal from the Ecclesiastical Courts to a Civil Court; but in certain cases it is permitted, under the name of appeal, to address a remonstrance on account of misuse of ecclesiastical authority to a Civil Court, the Royal Tribunal for Ecclesiastical Affairs. This Court has either to reject the appeal or else to cancel the disputed sentence of the ecclesiastical authorities. It has no right to give a decision of the case itself or to issue a separate disciplinary sentence.§

*The Roman  
Catholic  
Church in  
France.*

In France|| the discipline of those clergy of the Roman Catholic Church, who have a permanent position, depends almost entirely upon their voluntary and loyal obedience to their spiritual rulers. The Church possesses no coercive jurisdiction, and there is no external power to execute a sentence given by an Ecclesiastical Court against a priest. One article only of the Penal Code may be applied, which punishes the individual who wears a costume which he has no right to wear. This article has often been enforced on priests who have been forbidden by the ecclesiastical tribunal to wear the habit of priest.

The priests in charge of the churches of the chief places in the "canton" (églises cantonales) have alone a fixed tenure, and are alone legally styled *curés*. All the other clergy hold their charges absolutely at the will of the Bishops, who have, however, to inform the Government of the changes which they make in their dioceses by the appointment or the removal of clergy,¶

The cases in which the Civil Courts can interfere in ecclesiastical matters in France under the present laws are more numerous than is commonly supposed. In addition to cases which fall under the *appel comme d'abus*,\*\* the Articles 199 *sqq.* of the Penal

\* Rapport de 1837. Des chefs de la secte de Molokans qui ont été mis en prison par ordre très-haut de Sa Majesté, dans divers convents, furent mis en liberté par ordre suprême impérial, après avoir donné des preuves de conversion sincère (quoted by A. Theiner, *L'église schismatique Russe*, p. 58).

† Pinkerton, *The present State of the Greek Church in Russia*. Edinburgh, 1814, p. 34.

‡ Vol. II., pp. 608 ff.

§ *Zeitschrift für Kirchenrecht*, xii., 1874, p. 119 (Law of May 1, 1873).

|| Vol. II., pp. 604 ff.

¶ Historical, Appendix VIII., *post*, p. 177.

\*\* Since this term is of frequent occurrence in the evidence, it may be well to quote the exact definition of it. Pithou gives as one of the means for preserving the liberties and privileges of the Gallican Church *appels comme d'abus*, which he describes as: "Appellations précises comme d'abus que nos peres ont dit estre quand il y a entreprise de jurisdiction ou attentat contre les saincts decrets et canons receux en ce royaume, droicts, franchises, libertez, et privileges de l'Eglise Gallicane, concordats, edits, et ordonnances du Roy, arrests de son Parlement: bref, contre ce qui est non-seulement de droit commun, divin ou naturel, mais aussi des prerogatives de ce royaume et de l'Eglise d'iceluy." (Pithou, *Art. LXXIX*, as given by Dupin, *Libertés de l'Eglise Gallicane*, p. 78.) This definition is further developed in the sixth of the organic articles attached to the Concordat of 1801: "Les cas d'abus sont l'usurpation ou l'excès du pouvoir, la contravention aux lois et reglemens de la republique, l'infraction des règles consacrées par les canons reçus en France; l'attentat aux libértés, franchises et coutumes de l'église gallicane, et toute entreprise ou tout procédé qui,



Code are capable of severe application against the clergy, but they appear to be commonly disregarded in some particulars with impunity, though it is said that convictions occur almost every year for breaches of the Code.

The Synods and Consistories of other religious bodies in France are composed of clerical and lay members in general chosen by themselves; but in the case of the General Consistory of the Lutheran Church the President and two ecclesiastical members are named by the Government.\* These Synods appear to have complete control over the internal discipline and administration of the bodies which they represent, but all their decisions, of whatever kind, are submitted to the approbation of the Government; nor can they meet without the permission of the civil authorities.† The duration of the sessions of the General Synods is limited to six days.‡

*Other churches in France.*

The systems of ecclesiastical procedure in Churches in communion with the Church of England will repay careful study. These have been framed freely without the restrictions imposed by peculiar obligations towards the civil power, and may be regarded as expressing in various forms the independent judgment of those who have had the duty of organizing Anglican Churches under the conditions of modern life.

*2. Churches in communion with the Church of England.*

The canons of the Scottish Episcopal Church (1876),§ which are very full, and those of Melbourne (1878),|| which have many original provisions, may be referred to in particular. The canons of New Hampshire¶ and New York\*\* give examples of the two modes of procedure current in the American Episcopal Church.

According to the constitution of the Irish Episcopal Church†† the Court of First Instance consists of the Archbishop or Bishop (or his Commissary), the Chancellor of the Diocese, and one clergyman and one layman, summoned by rotation from a body of three clergymen and three laymen members of the Church, elected every five years by the clerical members and lay synodsmen respectively of the Diocesan Synod.

*Episcopal Church in Ireland.*

An appeal lies to the Court of the General Synod, which consists of an Archbishop, a Bishop, chosen by the Archbishop, and three laymen, balloted for from a list of laymen selected by the General Synod from among persons exercising judicial functions in certain named courts in Ireland.

If a question of doctrine is involved in a case, all questions of fact are tried in the Diocesan Court, and the case is then sent by letters of request to the Court of the General Synod.

The final judgment can only be enforced through the temporal courts, as depending on the interpretation of a contract. All persons admitted to Holy Orders promise to submit themselves to the laws and tribunals of the Church.

In the Scottish Episcopal Church\* the Bishop in his Diocesan Synod is the Court of First Instance. The Chancellor of the Diocese, or some other competent person to act in his room, is present at the trial as assessor to the Bishop. The Bishop, after hearing the opinions of the clergy present, given severally, pronounces judgment. An appeal lies from the Bishop's judgment to the Episcopal Synod. Four Bishops, exclusive of the Bishop whose judgment is appealed against, form a quorum of this Synod. In the case of accusations against priests or deacons the Episcopal Synod is required to have the assistance of one or more legal assessors, and, if the Synod deem it advisable, of one or more clerical assessors.

*Episcopal Church in Scotland.*

In the case of sentences involving civil consequences, as deprivation of office, the sentence requires an action in the civil court for its enforcement.

Such cases have arisen, and the law has been laid down clearly by the Scottish Courts. It is held that in regard to voluntary religious associations disputes among the members must be determined by the terms of the contract on which the associations are based. In such cases the civil court is competent to examine the contract in order to see whether the party who alleges that he has been wronged has precluded himself from seeking redress in the court, and, if not, to examine whether the sentence of which complaint is made fell under the contract. (*Dunbar v. Skinner*, Episcopal Church; 1849. *McMillan v. General Assembly*, Free Church, 1859).

"dans l'exercice du culte, peut compromettre l'honneur des citoyens, troubler arbitrairement leur conscience, dégénérer contre eux en oppression ou en injure, ou en scandale public." (Dupin, *l. c.*, p. 200.) Dupin gives a selection of cases, pp. 231 ff.

\* *Articles Organiques des cultes Protestants*, § 41.

† *Articles*, §§ 4, 5, 30, 31, 42. Compare *Articles* 22, 24, 37, 38, 39.

‡ *Articles*, §§ 32, 42.

§ *Id.*, pp. 569 ff.

\*\* *Id.*, p. 598.

§ Vol. II., pp. 554 ff.

¶ *Id.*, pp. 580 ff.

†† *Id.*, p. 553.

‡‡ *Id.*, pp. 554 ff.



It is also laid down that "some civil wrong, justifying a demand for redress, or some patrimonial injury, entitling the party to claim damages, must be alleged, before the civil court can entertain and adjudicate on such cases." (Lord Cowan, *Forbes v. Eden*, 1865.)

It has, however, been maintained that the civil court may and ought to assist, to a certain extent, the execution of a voluntarily constituted jurisdiction in churches not established by enforcing the attendance of witnesses, as in the case of arbitration. (Lord Ardmillan, *Lews v. Fraser*, 1874.)

*Episcopal Church in the Colonies and the United States of America.*

In the Colonial and American Episcopal Churches there are two distinct types of Courts of First Instance. On one system adopted in some American and Canadian Dioceses the court consists of a "Board of Triers," which decides all questions of law and fact, and recommends the punishment to the Bishop. On the other system the court consists of the Bishop in person, or his representative, generally with the assistance of a legal adviser, if the Bishop sits in person, and of "assessors," who sometimes decide, as a jury, on questions of fact, and sometimes have equal votes with the President of the Court.\*

The judgment is almost universally given by the Bishop in person.†

In the American Church provision for an appeal is made only in very few cases. More frequently the Bishop has the power of ordering a fresh trial if he thinks that justice requires it.

In the Australian Church ‡ "a Committee of Appeal of the General Synod" has been formed, consisting of five members, the Primate, a Bishop elected by the House of Bishops, a clergyman elected by the clerical representatives, a layman elected by the lay representatives, and a layman elected by the General Synod voting collectively and not by orders. Appeals from the judgment of the Diocesan Court to this body are distinctly recognised in some dioceses, but there does not appear to be at present any uniform law.

In some of the American dioceses canons have been made to deal with innovations in ritual and with differences between ministers and congregations. In both cases the authority of the Bishop is invoked, and obedience to his final judgment, given under certain conditions, is ultimately enforced (subject to further proceedings in the former case), by the penalty of suspension or deprivation in the case of the minister, and of separation from the Diocesan Convention in the case of the congregation, for continued contumacy.§

*Enforcement of judgment.*

In most cases the civil consequences of a judgment can only be enforced through the civil courts; but various provisions have been made in different dioceses to give as direct effect as possible to the sentence of the Ecclesiastical Court. In Adelaide || every clergyman on receiving his licence makes himself tenant-at-will of the Ordinary for the time being. Thus judgment can be enforced by the withdrawal of license and loss of benefice.

In the canons of the diocese of Arkansas ¶ it is provided that all rights, claims, and privileges which any clergyman may enjoy, or have a right to enjoy or receive in the diocese by virtue of her general law or by particular canon, are by the sentence of suspension or degradation *ipso facto* forfeited and rendered void; and every clergyman holds his ecclesiastical rights subject to this tenure. To this provision another is added to the effect that any resort to a civil court on the part of the accused for the purpose of impeding, delaying, or avoiding trial shall be treated as contumacy, and shall be sufficient cause to suspend such clergyman from the exercise of the ministry. The

\* Vol. II., pp. 624 f.

† It is provided in the constitution of the Episcopal Church in the United States of America that the court for trying bishops shall be composed of bishops only, and that none but a bishop shall pronounce sentence of admonition, suspension, or degradation from the ministry on any clergyman (Art. 6).

Detailed provisions regulating the trial of bishops are given in the *Digest of Canons for the Government of the Protestant Episcopal Church*, 1874. Title II., Canon 9.

‡ Vol. II., p. 630.

§ *Id.*, p. 634. In the *Digest of Canons* the general provision on this subject is as follows: "In cases of difference between the minister and his congregation, the bishop in charge shall, with the standing committee [there is no general definition of the constitution of this body], duly examine the same, and said bishop and standing committee shall have full power to settle, and, if possible, adjust, such difference upon the recognised principles of ecclesiastical law, as laid down in the Canon Law of the Protestant Episcopal Church" (Title III., Canon 5, § 10.) Special canons are given (Title II., Canon 4, §§ 1-5) for dioceses which have not made or shall not make provisions by Canon upon the subject.

|| *Id.*, p. 562.

¶ *Id.*, p. 557 f.



execution of the canons is in Massachusetts made simpler by the law which constitutes the wardens of episcopal churches a corporation for holding their property.\*

In New Zealand every minister signs a declaration of submission to the authority of the General or Diocesan Synod, and any final sentence of an Ecclesiastical Court has the force of an award made in a reference to arbitration by consent, and may be made a rule of the Supreme Court of New Zealand.†

Such agreements are held to be valid and would in general be enforced by the Civil Courts. The principle is clearly laid down in the case of *Long v. the Bishop of Cape-town*: "The Church of England, in places where there is no Church established by law, is in the same situation with any other religious body, in no better but in no worse position; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their body, which will be binding on those who, expressly or by implication, have assented to them.

"It may be further laid down that, where any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation; the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms are prescribed, and, if not, has proceeded in a manner consonant with the principles of justice."‡

Some important cases have been decided in America, which tend to fix the limits within which the civil courts will review the sentences of Ecclesiastical Courts which affect civil rights.

Decisions of the Civil Courts, (a) in other countries.

In the case of *Chase v. Cheney*, decided in the Supreme Court of Illinois in 1871,§ it was held by the court unanimously that when a spiritual court has once been organised in conformity with the rules of the denomination of which it forms a part, and when it has jurisdiction over the parties and the subject-matter, its subsequent action in the administration of spiritual discipline will not be revised by the secular courts. A majority of the court held also that when no other right of property was involved than the loss of the clerical office or salary, a spiritual court is the exclusive judge of its own jurisdiction, under the laws and canons of the religious association to which it belongs, and that its decision of that question is binding upon secular courts. But two of the judges dissented from this opinion, and maintained that it is the duty of the secular courts to examine the question of jurisdiction, without regard to the decision of the spiritual court itself, and if they find such tribunal has been organised in defiance of the laws of the association, and is exercising a merely usurped and arbitrary power, they should furnish such protection as the laws of the land will give.

*Chase v. Cheney.*

A remarkable suit between the representatives of two bodies of the Society of Friends, *Earle, &c. v. Wood, &c.*, decided in the Supreme Court of Massachusetts, U.S.A., in 1852, shows that the civil courts have not always observed the limits of interference laid down in *Chase v. Cheney*. A division arose in one of the "monthly meetings" of the society, on the ground that the "overseers" had violated the order and discipline and doctrines of the society, and the dissentients seized an opportunity of taking possession of property held by the overseers of the monthly meeting for the use of the society. The dissentients organised a complete system of church government parallel to that of the original body, and claiming to take its place. The overseers met the claim of the dissentients by seeking a perpetual injunction against them, which the Supreme Court granted after a lengthened inquiry. In giving judgment the court distinctly recognised its right to consider the alleged differences of speculative theological opinion, and to decide whether the incriminated opinions were so far inconsistent with the principles of the society as to render those holding them incapable of representing the society. It even contemplated the possibility that the society itself might so depart from its principles as to destroy its identity, and "leave its property derelict." But the decision turned upon the jurisdiction of the "meetings" of the society, in which the case originated; and the civil court, after considering the rival claims of the conflicting "meetings," determined without hesitation to which of them authoritative jurisdiction belonged.||

*Earle, &c. v. Wood, &c.*

\* Statutes of 1785, c. 51. § 1. See *Montague v. Smith* 13 Mass. 405.

† Vol. II., pp. 561 ff.

‡ Moore, P.C. (N.S.) Cases, 461 (1863).

§ Vol. II., p. 638 ff.

|| Report of some of the proceedings in the case of *Earle and others against Wood and others* . . . by S. C. Bancroft, Boston, 1855, pp. 236, 238, 242.



(b.) In England.

*Attorney-General v. Pearson.*

The English Civil Courts do not appear ever to have placed any limitation upon their power of deciding on the merits of controversies which have arisen between members of the Nonconformist bodies where civil rights depended on the decision. They do not accept the decision of the supreme authority of the particular society as binding in regard to the interpretation of its documents, unless such acceptance has been specifically agreed to, but claim to interpret them independently. The court administers each trust according to its terms; and if the instrument declaring the trust does not define the precise form of religious worship for the benefit of which it was designed, the court will endeavour to determine by usage what the intention of the founder was. But it will not allow any usage to alter the nature of the original intention, if that is expressed; nor permit the individual who may at any time have the management of the property to make it serve for the support of opinions different from those which the founder prescribed.\*

*Attorney-General v. Shore.*

In the case of Lady Hewley's Charity (*Attorney-General v. Shore*) which extended over 10 years (1833-1843), and was finally decided in the House of Lords, the question arose whether Unitarians could participate in the benefits of a foundation for "poor and godly preachers for the time being of Christ's Holy Gospel." This question the court decided by the interpretation of the language and terms used in the deeds; and in moving the judgment of the House of Lords, the Lord Chancellor (Lord Cottenham) affirmed the principle that "evidence which went to show the existence of a religious party by which the phraseology found in the deeds was used, and that Lady Hewley was a member of that party, was admissible;" or, in other words, that the court would take account of the circumstances by which the author of an instrument for a religious purpose was surrounded at the time.†

34 & 35 Vict. c. 40.

It may be interesting here to refer to an Act regulating the proceedings of the Primitive Wesleyan Methodist Society in Ireland (34 & 35 Vict. c. 40. 1871), in which a detailed definition of the doctrines of the Society is added in a Schedule to the Act, in order to secure that they may be taught in the Chapels of the Society.‡

*Brown v. Curé, &c. of Montreal.*

The exceptional position of the Roman Catholic Church in Canada, as having certain claims on its members enforceable at law, and consequently certain obligations towards them, gave occasion to an important suit (*Brown v. Curé, &c., of Montreal*) which was finally decided on appeal by the Privy Council in 1874.§ The ecclesiastical authorities refused burial to a member of the Roman Catholic Church (J. Guibord) in that part of the cemetery under their control, which was set apart for Roman Catholics, on the ground that he was excommunicated by a general sentence and "un pécheur public."

Several questions of interest were left undecided, because they were not raised distinctly by the limited claim which was made. But it was held generally that no change could be made in the ecclesiastical law recognised at the cession of Canada without the authority of the Government, and therefore that the Civil Court would maintain the general law of the Roman Catholic Church as modified by what are known as "the liberties of the Gallican Church." It was further laid down that if an act of the ecclesiastical authorities "be questioned in a Court of Justice, that Court has a right to inquire, and is bound to inquire, whether the act was in accordance with the law and rules of discipline of the Roman Catholic Church which obtain in Lower Canada, and whether the sentence, if any, by which it is sought to be justified, was regularly pronounced by an authority competent to pronounce it." And after considering the whole evidence adduced, the Court decided that it was not shown that Guibord was "at the time of his death under any such valid ecclesiastical sentence or censure as would, according to the Quebec Ritual, or any law binding upon Roman Catholics in Canada, justify the denial of ecclesiastical sepulture to his remains."

EARLY ILLUSTRATIONS OF THE RELATIONS OF CHURCH AND STATE.

The illustrations which have been given of the relations into which the Civil and Ecclesiastical Courts have been brought at the present time show that it is impossible to preclude the contingency of collision between them. The Church exists as a spiritual society under the conditions of civil life. It is necessary, therefore, that its members should be subject to the laws of the State as to conduct and the enjoyment of civil rights. It rests with the State to determine how far general obligations,

\* *Attorney-General v. Pearson.* Judgment of Lord Eldon, in 1817. 3 Merivale, 400.

† *Simon's Report*, 640.

‡ Vol. II., p. 534, and *post*, p. 240.

§ *Law Reports*, 6 P.C. 157.



as, for example, that of military service, or of taking an oath, may be dispensed with, and on what terms property can be held. In this respect there is room for the greatest variety of action on the part of the State. It may be the duty of a believer to endure death rather than obey particular laws if they are put in force against him, as under the early Roman Empire, or to use every means to change them. Meanwhile he lives subject to their general power, and avails himself, if the case arises, of their protection.

Three examples place in a clear light the circumstances under which early ecclesiastical authorities thought it right to appeal to a non-Christian and to a Christian Government where civil rights were involved in an ecclesiastical judgment. The first is a request for the interference of an Emperor who afterwards became a persecutor. Paul of Samosata was deposed from the bishopric of Antioch by a Synod in 269, A.D. He, however, refused to leave "the house of the Church," that is probably the official residence assigned to the Bishop, and maintained his position till the defeat of Zenobia by Aurelian. On this the aid of Aurelian was invoked to give effect to the sentence of the Synod (272, A.D.). The fact that Paul had been supported by the influence of Zenobia may have inclined the Emperor to listen to the appeal more readily. At any rate, he decided that the house should be given to those to whom the bishops in Italy and Rome assigned it. "So," Eusebius adds, "Paul was driven out of the Church with the utmost shame by the worldly power."\*

Aurelian and Paul of Samosata.

The second illustration is offered by the action of the first Christian Emperor, Constantine. A schism had arisen in Africa, and two rival bishops claimed the see of Carthage, Cæcilian representing the Catholics and Majorian the Donatists. A request was made to Constantine that he would appoint a body of bishops to decide whether the charges brought against Cæcilian by the Donatists could be substantiated. In accordance with this request a decision was given by the bishop of Rome in conjunction with other bishops. The Donatists, against whom the bishops decided, were discontented, and refused to submit. On this the Emperor laid the matter before a council at Arles (314, A.D.). The council decided in the same way as the bishops. The Donatists were still discontented, and appealed to the Emperor himself to examine the matter. Constantine was most unwilling to investigate such a case; but he did so, and confirmed the former judgments.† In another cognate case he committed the inquiry to the Proconsul Ælian. This appeal, it will be observed, from the necessity of the case, was made by the schismatical party, but there is no evidence to show that the Catholics questioned the propriety of the course which was taken.‡

Constantine and the Donatists.

The same schism gave occasion to another appeal to the civil power at a later date. Augustine sought to heal the division of the Church, which continued till his time, by a conference of the Catholic and Donatist bishops. For this end he sought the intervention of the Emperor Honorius, who commissioned Marcellinus, one of his chief civil officers in Africa (411, A.D.), to convene such an assembly and preside at it and give judgment upon the questions in debate.§ This Marcellinus did. He pronounced the Donatists guilty of the schism; and in his sentence he declared that those who refused to conform should be deprived of the churches of which they had retained possession by his permission when they agreed to appear before him.||

The judgment of Marcellinus.

The later imperial legislation both in the east and in the west recognises in the Emperor, who is assumed to be in perfect harmony with the church, a general power of ruling it, pre-supposing the existence of ecclesiastical laws over the execution of which he is to watch. This vague authority was variously exercised according to the character of those who represented from time to time the civil and ecclesiastical

Later legislation.

\* Euseb., *H.E.*, vii. 30.

† Constantine's own words, as given by Augustine in his account of the matter, are worth quoting: In quo pervidi, inquit [Constantinus] Cæcilianum virum omni innocentia præditum, ac debita religionis suæ officia servantem eique ita ut oportuit servientem. Nec ullum in eo crimen reperiri potuisse, eidem apparuit, sicut absenti fuerat adversariorum suorum simulatione compositum. Aug. *c. Cresc.* iii. 71, 82.

‡ Aug., *Epp.* 43, 105; *Brevic. Coll. cum Don.* 37.

§ The Commission of the Emperor to Marcellinus contains the following words: Cui quidem disputationi principe loco te judicem volumus residere . . . omnemque vel in congregandis episcopis vel evocandis si adesse contempserint, curam te volumus sustinere; ut . . . ea . . . quæ nunc statuta cognoscis probata possis implere solertia; id ante omnia servaturus, ut ea quæ circa catholicam legem vel olim ordinavit antiquitas, vel parentum nostrorum auctoritas religiosa constituit, vel nostra serenitas roboravit, novella subreptione submota, integra et inviolata custodias.

|| Aug. *Tom. IX.*, *App.* p. 1175 (Ed. Gaume). Not long before the Donatists had received similar assistance from the law in regaining possession of their churches from a body which seceded from themselves. Aug. *c. ep. Parmen.* i, 18.



*Charles the Great.*

powers respectively. The laws of Charles the Great illustrate the action of a strong monarch. When a case could not be settled before the bishop or the metropolitan he directed that it should be brought finally before himself.\* The Synods referred their decisions to him that they might be supplemented, amended, and confirmed † He claimed for himself the right and the duty of following the example of Josiah in endeavouring to bring back to God the kingdom committed to him by visitation, correction, admonition, in virtue of his royal office.‡

*Early English kings.*

The early English laws prove that similar powers were exerted by the sovereigns before the Conquest;§ and throughout the mediæval period the English king never surrendered his supreme visitatorial power, 'the power of determining finally, on his own responsibility and at his own discretion, the ecclesiastical relations of his subjects.'||

We do not think it necessary to follow out the history of the conflicts which arose in England and on the Continent from the assertion of this visitatorial power on the part of the Crown. We may, however, be allowed to refer to a memorandum on the struggles between the royal and ecclesiastical authorities in France in the 17th and 18th centuries, given as an Appendix to this Report;¶ and we now proceed to consider the history of the development of ecclesiastical judicature in England.

THE HISTORY OF CHURCH COURTS IN ENGLAND UP TO 1832.  
Prefatory Remarks.

The operation of the Statutes referred to our consideration having modified the whole fabric of ecclesiastical judicature in England, the scope of our inquiry is found to include the whole history of the machinery of ecclesiastical jurisdiction in its origin and working. We proceed to give a brief outline of this history founded on an exhaustive statement which has been compiled at our request by a member of our body, and is given as an Appendix.\*\* We are induced to give this outline by the considerations, that the existing system of ecclesiastical judicature, however modified by the Reformation, owes its origin to causes which were at work from the earliest days of the church; that it is important so to realise the course of events by which that judicature has been developed and modified, that we may be able to offer practical recommendations consistent with historical continuity; and that it is very desirable that such recommendations should be placed before Your Majesty in language of definite import.

*Scope of inquiry.*

*Theory of ecclesiastical judicature in National Churches.*

It is not necessary to review the origin and nature of the relations between the ecclesiastical and civil powers in the Christian Church. These had assumed a definite form before the Church of England was founded, and were a part of the common inheritance of Christian civilisation which was introduced at the conversion of the English. It is sufficient to note that in the historical growth of ecclesiastical judicature in national churches three principles are involved: (1) the existence of an ecclesiastical law independent of, and, in modern states, anterior to the national secular law; (2) the acceptance by the nation of that law, so far as it is of general obligation, as the law of religion of the national church; and (3) the annexation, by the nation, to the sentences of the law so accepted, under varying limitations, of the coercive power by which alone the sentences can be enforced upon the unwilling.

*Arrangement of material.*

The main points, accordingly, which are to be illustrated by the history of the several periods into which English church history is divided, may be arranged under three heads: (1) the nature of the law administered; (2) the constitution of the courts which administered the law; (3) the nature of the procedure adopted in the courts and in the execution of their decisions.

\* *Capit. Francof.* an. 794, § 6. Si aliquid est quod episcopus metropolitanus non possit corrigere vel pacificare, tunc tandem veniant accusatores cum accusato cum litteris metropolitani ut sciamus veritatem rei. *Capit. Aquisgr.* an. 802, § 15. Monachi ab episcopo provincie ipsius corripiantur. Quod si se non emendent, tunc archiepiscopus eos ad synodum convocet. Et si neque sic se correxerint tunc ad nostram presentiam cum episcopo suo veniant.

† *Concil. Arelat.* an. 813, s.f. Hæc igitur . . . quæ emendatione digna perspeximus quam brevissime annotavimus et domino imperatori presentanda decrevimus, poscentes ejus clementiam ut si quid hic minus est, ejus prudentia suppleatur, si quid secus quam se ratio habet, ejus judicio emendetur, si quid rationabiliter taxatum est, ejus adjutorio divina opitulante clementia perficiatur.

‡ *Capit. Aquisgr.* an. 789 Præf.

§ Rex autem, qui vicarius summi Regis est, ad hoc constitutus est ut regnum et populum Domini et super omnia sanctam ecclesiam regat et defendat ab injuriosis . . . Illos vocari decet reges qui vigilanter defendunt et regunt ecclesiam Dei et populum ejus. ("Laws of Edward the Confessor," Thorpe, p. 193.)

|| Reference may be made to an interesting controversy between the Bishop of Chichester and the Abbot of Battle, whom Henry II. summoned before him for judgment "dato eis die peremptorio". A.D. 1157 (*Concilia* ed. Colet., xiii., 53ff.)

¶ Historical Appendix VII., *post*, p. 170.

\*\* Historical Appendix I., *post*, p. 21.



The inquiry will divide itself into three periods, and include the examination of these points, as illustrated by (1) English church history before the Norman Conquest; (2) the history of the Medieval Church; and (3) the proceedings which took place at, and have followed, the Reformation.

1. The law administered in the ancient English Church comprised, first, a body of canonical law containing the Holy Scriptures, the creeds, and the canons of general councils, which were authoritative in the whole of the Western Church; and, secondly, the decrees of the national councils, supplemented, in application, by the less authoritative manuals of discipline known as Penitentials, by the collections of foreign canons, and by the coincident legislation of Christian kings.

(1.) THE  
ANCIENT  
ENGLISH  
CHURCH.

1. Law administered.

2. The proper Ecclesiastical Court, during this period, was that of the bishop, whose jurisdiction was universally recognised as inherent in his office, as chief pastor of the diocese; as the protector of the clergy; and as the proper arbitrator in disputes which did not admit or require legal decision.

2. Constitution of the courts.

This judicial authority was inherent in the person of the bishop rather than in the court, and might be exercised in synod, in visitation, *in camera*, or *in itinere*; it included all the disciplinary powers connected with the penitential system, the determination of disputes and charges on moral and spiritual matters touching both clergy and laity, and of all matters of duties and property, which were dealt with by canon. The archdeacon was the executive officer of the bishop, and in some matters probably acted as his representative. As a secular lord, moreover, the bishop had rights and duties which involved a further jurisdiction over his dependents, analogous to that of the temporal lords; and he had a recognised place in the assemblies of the hundred, of the shire, and of the national council or witenagemot, all of which exercised judicial functions.

Judicial power of bishops.

Ecclesiastical suits were heard and certain portions of the episcopal jurisdiction were exercised in the hundred moot and shire moot, in which the bishop and ealdorman are said to have expounded the divine and secular law. The jurisdiction here exercised, although liable to be confused with the popular jurisdiction, and probably transacted by the popular procedure, seems to have been a proper episcopal jurisdiction concerning matters of mixed character, especially such as involved both ecclesiastical and civil penalties, such as adultery, detention of tithe, injuries done to clergy, and the like.

Jurisdiction exercised in the popular assemblies.

The metropolitan authority of the archbishop was recognised by the bishops and, both before and after the union of the kingdom under the West Saxon dynasty, by the kings and witenagemots.

Metropolitan authority.

There were provincial synods in which questions of greater importance were settled, and which consisted of archbishops and bishops, abbots, and other clergy, and were occasionally attended by kings and lay lords. In these canons were passed, disputes concerning ecclesiastical estates were decided, great offenders were sometimes tried, and occasionally bishops removed from their sees.

Provincial synods.

The prevalence of the monastic system and the great importance attached to the office and character of abbots, with the exemption which many monasteries enjoyed from episcopal superintendence, had the effect of creating peculiar jurisdictions for abbeys, in which both the ecclesiastical and secular functions properly belonging to the bishop devolved upon the abbot.

Origin of peculiars.

It is very questionable whether under the ancient English secular law there was any provision for appeal from an inferior to a superior court; and, although in ecclesiastical matters, the example of foreign law may have affected the English Church so far as to allow the introduction of appeals from the bishop to the archbishop or the provincial synod, there is very little evidence of any sort that affects the point even in questions of property and disputed rights, none that concerns discipline or doctrine. Of appeals to Rome, in the form which appeal ultimately took in England, there are no instances, the few applications to that see which occur in early English times having no permanent result in legal history.

As to appeals.

3. The ecclesiastical procedure during this period is a matter on which no sufficient illustrations are to be found; and it can only be stated as probable that, in those portions of the judicature which were regulated by spiritual authority proper, the procedure would follow that of the foreign churches, which was based on the ancient law of Rome; whilst in those portions that were exercised in the shire moot it would follow the popular usages of ordeal and compurgation; and in the more private discipline the rules of the penitentials. As to the means of executing the episcopal sentences the same obscurity prevails, but it would seem likely, from the general bearing

3. Procedure in the courts.

As to execution of sentences.



of Anglo-Saxon law, that the bishop was able either to direct by his archdeacon and subordinate officers the actual enforcement of his decisions or to call for the services of the shire administration without any previous application to the Crown. The laws contain provisions for the treatment of the excommunicate, corresponding to those for the outlaw, and prescribe punishments and compensations for ecclesiastical offences as offences against the national law.

(II.) FROM  
THE NORMAN  
CONQUEST  
TO THE  
REFORMA-  
TION.

1. Law ad-  
ministered.  
*Growth of  
Canon Law.*

*Ecclesiasti-  
cal law in  
England.*

1. The Norman Conquest not only introduced into England a large number of bishops educated in and accustomed to a more developed system of law, but occurred at a moment at which the cultivation of the civil and canon law was making great progress. One of the most important of the Conqueror's Acts was intended to secure the proper administration of the "episcopales leges," and the canons. Several attempts at the codification of the ancient canons were made in the eleventh century in England as well as abroad, but all were superseded by the publication of the *Decretum* of Gratian about the year 1151. This was the basis of the later *corpus juris canonici* of the Roman and Medieval Church, which was subsequently enlarged by the addition of the decretals of Gregory IX., Boniface VIII., John XXII., and later Popes. But the canon law of Rome, although always regarded as of great authority in England, was not held to be binding on the courts. No new code was imposed at the Conquest or later. The laws of the Church of England from the Conquest onwards were, as before, the traditional Church law developed by the legal and scientific ability of its administrators, and occasionally amended by the constitutions of successive archbishops, the canons of national councils, and the sentences or authoritative answers to questions delivered by the Popes.

The constitutions of the archbishops, from Stephen Langton downwards, and the canons passed in legatine councils under Otho and Othobon, ratified by the national Church under Archbishop Feckham, were finally received as the texts of English Church law, under the hands of the commentators, John of Ayton and William Lyndwood. These commentators introduced into their notes large extracts from and references to both the canon and the civil law of Rome, but these were not a part of the authoritative jurisprudence. The ecclesiastical law of the province of Canterbury, after having been codified by Lyndwood in the *Provinciale*, was received in the province of York in 1462.

*Restraints  
on ecclesias-  
tical legis-  
lation.*

The ecclesiastical legislation was watched very jealously by the Crown and by those who administered the secular justice. It was a part of the policy of the Conqueror that no general council of the bishops should enact or forbid anything but what was agreeable to his own will or had been first ordained by him. In the reign of Henry I. the King's assent to certain statutes made in councils of the clergy is distinctly expressed. Stephen forbade Vacarius to teach the civil law, which would have regulated ecclesiastical procedure. But from this time onwards the method of restraint was confined to the issue of warnings and prohibitions addressed to the archbishops and to rare occasions on which the primate was obliged to recall an Act once passed. In all the numerous recorded instances in which the Crown interfered with the exercise of Church legislation, the royal power seems to have acted only in restraint of acts relating to temporal matters and such as in actual exercise could be treated by way of prohibition.

2. Consti-  
tution of  
courts.

*Edict of  
William the  
Conqueror.*

2. A great development of the machinery of ecclesiastical judicature followed directly upon the Norman Conquest. That event placed the English Church in closer connexion than before with the churches of the Continent, introduced a new school of ecclesiastical administrators, and coincided in time with a revival of the study of civil and canon law. The Conqueror's edict which forbade the bishops and archdeacons henceforth to hold ecclesiastical pleas in the shire moot or to draw to the judgment of secular men causes which pertained to the government of souls, included likewise an undertaking that the aid of secular justice should be freely given for the enforcement of ecclesiastical sentences. Its effect, therefore, was to withdraw all spiritual causes and suits affecting the clergy from the popular courts and the customary procedure, and to compel the purely ecclesiastical courts to adopt greater fixity of constitution, to increase their organisation, and to improve their jurisprudence.

*Growth of  
archidia-  
conal courts.*

One of the first results of this impulse was the growth of the archidiaconal jurisdiction, the dividing of the dioceses into a large number of archdeaconries, and the institution of a graduated system of appeal. Within half a century from the date of the Conquest the archdeacons had acquired a customary jurisdiction which was dangerous to the authority of the bishops. In order to preserve the episcopal judicature



in its integrity, and to strengthen the legal authority of the diocesan and provincial courts, the bishops instituted the system of Officiality, which enabled them to delegate the exercise of their judicial powers to trained ecclesiastical lawyers; and, without divesting themselves of the right to act as judges, to employ such substitutes with full powers for all ordinary business. The institution of officials, chancellors, commissaries, and similar officers coincides in point of time with the publication of the Decretum and with the revival of the study of the civil law of Justinian, about the middle of the twelfth century.

*Growth of jurisdiction by Officials and Commissaries.*

The appointment of an Official was originally the mere substitution of a judge, which did not prevent the bishop from acting in person; but there was no appeal from the Official to the bishop; and in later days it became the practice for the bishops in the act by which they created the Official to express distinctly the points of jurisdiction reserved to themselves. The commission of the official determined originally with the pleasure or with the life of the person who commissioned him; but, although the process cannot be clearly traced, both in England and abroad a usage seems to have grown up by which the office became permanent; and the present practice in this country, which became common in the 17th century, of making the appointments by letters patent, securing the nominee in his office for life, was the formal recognition of a usage which had been in many cases acted upon for a long time before.

*Character of Official.*

*Commission of Official.*

With the improved organisation of courts was introduced a regular system of appeals. From the court of the archdeacon an appeal lay to the court of the bishop, and from that of the bishop to that of the archbishop: from whom, according to the common practice of foreign churches, lay an appeal to the pope. Nearly coincident with the growth of this system was the development of the legatine system by which the popes attempted to establish in each kingdom a resident representative of their supreme jurisdiction. The English kings struggled against both these practices; forbidding the introduction of legates without their leave, and also prohibiting appeals to Rome. The first difficulty was overcome by the popes investing the archbishops of Canterbury with the legatine authority; an expedient which had the effect of creating doubts as to the limits of archiepiscopal jurisdiction, and of raising a presumption that acts which had been done by the primate as of ordinary authority were now done by virtue of the legation from Rome. The usage of appeals to Rome was temporarily checked by the constitutions of Clarendon, which directed that if the archbishop failed in doing justice, recourse should be had in the last instance to the king, so that by his precept the controversy should be terminated in the archbishop's court, so that it should proceed no further without the assent of the king. This constitution, however, the king had to renounce, and appeals went on as before; and continued to be numerous, although the succeeding sovereigns, especially Henry III. and Edward I., asserted as a privilege of England that none of their subjects should be cited out of the realm. The practice of appeals to Rome lasted until the Reformation, although it was checked in all matters with which the civil courts were competent to deal by the statutes of præmunire, and gradually, in fact, became restricted to testamentary and matrimonial business.

*Growth of appeals.*

*Appeals to Rome.*

*Institution of legations.*

*Attempts to restrain appeals to Rome.*

With these limitations there sprang up and existed throughout the middle ages a system of appeal from the archdeacon to the bishop, from the bishop to the archbishop, and from the archbishop, whether as primate or legate, to the see of Rome.

*Establishment of system of appeals.*

The multiplication of courts, the development of jurisprudence, and the organisation of an appellate system had an important effect in the creation of a class of ecclesiastical lawyers, who were qualified to act as advocates and judges. From this were chosen the archdeacons, chancellors, officials, and frequently the bishops and archbishops themselves, who are found voting in synodical and academical business as civilians and canonists rather than as divines. It was a rule of the canon law, as propounded by the popes and incorporated in the ecclesiastical law of England, that no one who was not in holy orders should take part in spiritual judicature; and it is probable that this rule was observed under the limitations, first, that the primary authority of the court originated in the authority of the archbishop, bishop, or other spiritual person who either acted as judge, or commissioned the judge; and secondly, that the particular authority of the official, commissary, or other delegate, depended on his office and appointment, rather than on his personal qualification, but that the possession of some grade of holy orders was indispensable for his taking such commission. Hence a very low grade of orders was sufficient qualification for any rank in the ecclesiastical judicature, although for the more solemn and formal processes of sentence and execution of sentence higher grades were required; for example, any ecclesiastical judge

*Growth of the canonists and civilians.*

*Qualifications of ecclesiastical judges.*



might decree excommunication, but only a priest could bestow absolution, and the presence of one bishop or more was required for the formal degradation of a priest.

*Completeness of ecclesiastical judicature.*

The ecclesiastical courts of England during the middle ages were the judicial tribunals of the several grades of ecclesiastical officers who possessed any measure of jurisdiction, or had functions subsidiary to the exercise of jurisdiction. Ecclesiastically the kingdom was divided into provinces, the provinces into dioceses, the dioceses into archdeaconries, and the archdeaconries into deaneries; and besides these there were peculiars, or special jurisdictions, belonging to the Crown, the archbishops, the bishops, the deans, chapters, prebendaries, and others, as well as to the monasteries and exempt bodies of the same character. The courts therefore arrange themselves in corresponding gradations into provincial, diocesan, archidiaconal, rurideconal, and peculiar. As the laws, procedure, and general constitution of the peculiar courts are merely such as belong to sectional or exempt divisions of diocesan jurisdiction, we do not propose to mention them further.

*Provincial courts.*

The provincial courts are those which belong to the jurisdiction of the archbishops; and are essentially the same in both provinces, although the forms and historical development of the courts of the province of York vary considerably from those of Canterbury.

*Province of Canterbury.*

The provincial courts of Canterbury during the period before us were four; the court of the official principal, the court of audience, the prerogative court, and the court of the archbishop's peculiars: to which for the sake of completing the outline may be added the court of the Convocation of the province, in which the archbishop exercised jurisdiction occasionally in the presence and with the advice of the clergy; and the personal jurisdiction of the archbishop himself exercised informally and perhaps extrajudicially. The courts of York were the prerogative court and the chancery court.

*Court of Arches.*

(1.) The court of the official principal of the Archbishop of Canterbury, commonly known as the court of the arches, was the consistory of the archbishop, held by the official principal, in the church of St. Mary-le-Bow, and had a distinct staff of officers and body of advocates. It was the court of appeal from all the diocesan courts of the province, and likewise (whether or not by virtue of the archbishop's legatine capacity) a court of first instance in all ecclesiastical matters. The official principal from an early period bore also the title of dean of the arches, as holding the office of judge of the archbishop's peculiars whose court was held in Bow Church. Originally the dean of the arches was a subordinate of the official, subsequently he became his commissary, and finally the two offices were regularly held together. As official principal the judge was held to possess all the judicial power of the archbishop; his jurisdiction extended over all ecclesiastical causes; he issued process in his own name, and seems in all respects to represent the archbishop in his judicial character as completely as the chief justice represented the king.

*Court of Audience.*

(2.) The court of audience seems to have originated in the personal jurisdiction of the archbishop, which was not regarded as exhausted by the appointment of an official principal. According to Archbishop Parker its origin was this, "that the archbishop himself defined many causes at home and out of court, which before pronouncing judgment he committed for discussion to men skilled in the law and learned, who were called his auditors. This was therefore the domestic and familiar court of the archbishop, and his auditors followed his person."\* Little is known of the early growth or exercise of this jurisdiction; but it is said to have possessed co-ordinate powers with the court of arches. At a later period we find that the consistory court of St. Paul's was its place of session; that its members were reduced to one, the judge of the court of audience, who occasionally was also vicar-general, and who issued process not in his own name but in that of the archbishop.

*Prerogative court.*

(3.) The prerogative court of Canterbury, to which belonged the testamentary jurisdiction, when not under the official principal, was held by another judge with the title of master, keeper, or commissary. He issued process in the name of the archbishop, and originally sat in the archbishop's palace, from whence owing to the great increase in business the court was removed about the date of the Reformation to London, and subsequently sat at Doctor's Commons.

*Court of Peculiars.*

(4.) The archbishop's court of peculiars, which was the original sphere of the dean of the arches, was held in Bow Church, and adjudicated on causes arising within

\* *Antiquitates*, p. 46.



the thirteen London parishes, which, as peculiars of the archbishop, were exempted from the diocesan jurisdiction of the Bishop of London. The peculiars of the archbishop in Essex were under the jurisdiction of the Dean of Bocking.

The diocesan jurisdiction of the archbishop in the diocese of Canterbury was exercised by a commissary.

Of the jurisdiction exercised by the archbishop in Convocation, the chief illustration is in matters of heresy, which we shall notice in a later section.

The provincial courts of the province of York, known as the prerogative court and the Chancery court, seem to have answered to the general description given above of the prerogative court and court of arches for the province of Canterbury, but the title of auditor of the Chancery court of York, which is given to the official principal, seems to refer to a state of things in which the consistorial and auditorial jurisdiction were distinct.

The diocesan courts were the consistories of the bishops, held by the chancellor as official principal in each diocese, from which there was an appeal to the provincial court, and in which, besides causes of first instance, appeals were heard from the jurisdiction of the archdeacons. The consistory court was held in the cathedral church of the diocese, and was competent for every sort of ecclesiastical cause, including the matters which in the provincial courts were distributed between the court of arches and the prerogative court. During the vacancy of an episcopal see the consistorial jurisdiction was exercised by the archbishop through the vicar-general of the province. The authority of the bishop was exercised also by commissaries acting under commissions for more limited districts and with more limited functions than belonged to the chancellors or official principals, and from their decisions appeal lay to the bishop, the appeal from the chancellor lying to the provincial court only. The commission of the chancellor or official principal of the bishop differed from that of the official principal of the archbishop, in not necessarily conferring the whole judicial authority of the bishop, who in some instances reserved particular portions of jurisdiction for his own hearing, as is done at the present day.

The courts of the archdeacons were originally merely executive departments under the eye of the bishops; but, as has been stated, soon after the Norman Conquest these officers secured to themselves a prescriptive or customary jurisdiction, as subsections locally and functionally of the diocesan judicature. They likewise increased their power by visitations, undertaking that portion of diocesan superintendence in the years in which the bishop did not visit. These courts were held during this period either by the archdeacons in person or by officials substituted, as in the case of the higher officers; but there was no general rule for the constitution of the archidiaconal courts, nor were the powers exercised by them uniform in all dioceses; being regulated in many cases by express compositions between them and the bishops. Appeals lay, according to the constitutions of Clarendon, from the archdeacon's court to that of the bishop. To the jurisdiction of the archdeacons, besides the ordinary ecclesiastical causes, belonged the immediate care of the fabric, furniture, &c. of the parish churches. To the archdeacons also belonged the holding of the rural chapters, which were held, the ordinary ones from three weeks to three weeks, and the principal ones every quarter, and were attended by the beneficed clergy for the discussion of arduous business.

The judicial business of the rural deans was preparatory for the sessions or visitations of the archdeacons, and they were employed in the execution of their orders where they could be enforced by ordinary spiritual agency. These functions were ministerial to the archdeacons, and their arrangements, as well as those of the rural chapters, were matters rather of custom than of canon law; nor, although subordinate work in the nature of presentments, &c. was transacted by their means, is their action strictly entitled to the name of jurisdiction or their assemblies to the designation of courts.

Besides the jurisdiction exercised in the provincial and consistory courts by the archbishops and bishops, and by the archdeacons in their archidiaconal courts, a certain amount of ecclesiastical judicature originated in the practice of visitations, a very ancient duty of the episcopal office, which was devolved in early times in part on the archdeacons. The episcopal visitation, occurring at stated times and places and intended to secure the proper supervision of churches and ecclesiastical work, was a part of the more ancient procedure which was prescribed or defined by the Roman law, and had been (even before the establishment of Christianity in the Empire) a part of the apostolic work of the bishops; and it had continued to be a customary part of the bishop's work, for which rules of action and minute details of inquiry and correction

*Diocesan court of Canterbury. Jurisdiction exercised in Convocation. Province of York.*

*Diocesan courts.*

*Consistories.*

*Jurisdiction in vacancy.*

*Commissaries.*

*Jurisdiction of archdeacons.*

*Rural chapters.*

*Rural deans.*

*Ecclesiastical jurisdiction in visitations.*



were laid down in the penitentials. The visitation of the diocese was intended to give opportunity for hearing complaints of and by the clergy, and correcting all abuses so presented. The visitation (eo nomine) was not a part of the work of the diocesan synod or archidiaconal chapter; and, indeed, by a constitution of Archbishop Langton\* the archdeacon is forbidden to hold the chapter (or synod) of his archdeaconry and the visitation on the same day. But there can be little doubt that owing to the increased expenditure for procurations and synodals, the burden of providing for the bishop, archdeacons, and officials in their visitations and synodal meetings, it was found convenient to hold the two meetings very near together; and the visitation and the diocesan synod in later times became almost identified. At the early period, however, on which we are now employed, the visitation was probably an effective court, from which, no doubt, if the parties to litigation could not be satisfied on the spot, the further consideration of their suits would be carried to the settled courts. In the 13th century Bishop Grosseteste endeavoured to extend the use and importance of the visitation by compelling the attendance of sworn presenters of grievances and summoning witnesses under conditions not lawful without the direct authority of the Crown. This was resisted by Henry III. and his lawyers as an aggression on the common law of the land, and the attempt was foiled for the time; but, as was the case in some other departments of law, the end aimed at was probably achieved by means of some evasion, or roundabout proceedings, for the visitation presentments continued to be an effective part of the episcopal and archidiaconal judicature down to recent times.

3. Procedure  
in eccle-  
siastical  
courts.

*The pro-  
cedure of  
the civil law  
of Rome.*

3. The procedure of the ecclesiastical courts for at least three centuries and a half before the Reformation followed the forms of the Roman civil law. For a few years after the Norman Conquest, and after the ecclesiastical suits were by the Conqueror's edict removed from the view of the county court, the forms may not improbably have retained on the one hand the informal and paternal character of the earlier jurisdiction, and on the other the rough and ready expedients of the customary tribunals. But from the date of the revived study of law, and the more complete organisation of the judicature, the procedure was adapted to that of the Roman civil law, and such it has continued to be, with occasional special modifications, to recent times. It is not to be understood that ecclesiastical procedure follows with literal exactness any order distinctly laid down in the Code or the Digest; it is probable that it is in itself a development from the much more ancient system which the legislation of the emperors took for granted and modified only in particular points. The code of Theodosius was the real proclamation of Roman law in the West, and brought with it the prescriptive customary forms of the Republic. Whatever of Roman law was introduced into England between 1066 and 1150 was derived from that code. After that date the development of legal study was guided by the papal or other adaptations of the law of Justinian.

It is not our intention to attempt any technical survey of the ecclesiastical procedure, but this may be a convenient place for enumerating the matters which were subject to ecclesiastical jurisdiction, and for stating the practical limitations to its exercise which were imposed by the Crown.

*Subject  
matter of  
ecclesias-  
tical juris-  
diction.*

Ecclesiastical jurisdiction in its widest sense covered all the ground of ecclesiastical relations, persons, properties, rights, and remedies; churches, their patronage, furniture, ritual, and revenues; clergymen in all their relations, faith and practice, dress and behaviour in church and out; the morality of the laity, their religious behaviour, their marriages, legitimacy, wills and administrations of intestates; the maintenance of the doctrines of the faith by laity and clergy alike, and the examination into all contracts in which faith was pledged or alleged to be pledged, the keeping of oaths, promises, and fiduciary undertakings. To such a wide subject matter was the rule theoretically extended that no matter touching the government of souls should be tried by a secular tribunal.

*Multipli-  
cation of  
ecclesias-  
tical suits.*

It is obvious that as the matters of ecclesiastical litigation multiplied the forms of procedure must have been multiplied to meet them, and it is obvious also that to attempt any examination of these methods in detail would be to codify the whole law of ecclesiastical procedure. But it is important as regards the history of procedure, as well as that of the organisation of the courts, to notice here the multiplication of and classification of matters of litigation.

*Suits about  
ecclesias-  
tical pro-  
perty.*

(1.) The principle enunciated in the writ of the Conqueror, that causes touching the government of souls should not be tried by secular tribunals, might be construed as

\* Lyndw. iii. 22.



placing the determination of all disputes about ecclesiastical property in the hands of the church courts. It is not, however, probable that it ever practically received such an interpretation; for the Anglo-Saxons themselves had placed the acceptance of estates by the clergy under restrictions of State policy, and the Norman rulers were not likely to relax the hold which the feudal idea gave them over all landowners. But it does appear that questions of advowson were for a considerable period treated as ecclesiastical questions, and it is probably here that the first important limitation was imposed on the area of ecclesiastical jurisdiction. Of the very large number of reports made in the early years of Henry II. by Archbishop Theobald to the Pope, most concern patronage. This was reclaimed by Henry II. for the secular courts by the assize of Darrein presentment; it was the subject of the first of the constitutions of Clarendon, and although the innovations contained in those constitutions were renounced by the king, the change had established itself too deeply to be shaken. The questions of advowsons were tried henceforth in the king's court.

(2.) No attempt seems to have been made by the royal courts to interfere in the ecclesiastical administration of churches, their arrangements, furniture, services, or distribution of their revenues; nor, except in the case of the royal free chapels, to restrain the liberty of the ordinaries within their own jurisdiction. *Jurisdiction in matters of church service, &c.*

(3.) The jurisdiction in testamentary matters and the administration of intestates fell into the hands of the ecclesiastical courts in the 12th and 13th centuries, not, however, without a struggle. As it was impossible to devise freeholds by will, the jurisdiction was restricted to chattel interests, and was in its origin based on the right of the church to enforce obligations of honour and faith by spiritual censures; this was subsequently enlarged by the principle laid down that the church should dispose of the goods of the intestate for the benefit of his soul. The right to compel executors to fulfil their trusts was apparently conceded by the lay courts without difficulty. It is possible that this portion of jurisdiction was won by the clergy as a consequence of the Conqueror's statute; for although, the proof of the exercise of the right being somewhat later, there is no distinct epoch to which the commencement of the exercise might be referred, it is recognised in some points in Stephen's charter and was an established fact before Glanville wrote. The right to regulate the administration of intestates was too closely connected with the testamentary jurisdiction to be conveniently separated from it. It was recognised by the 27th article of Magna Carta, and although that article was omitted in subsequent issues, and Archbishop Boniface found it necessary to assert the right in a constitution of his own, the Crown ultimately acquiesced in the arrangement. *Testamentary jurisdiction.*

The jurisdiction in testamentary matters was arranged under the department known as the prerogative court of the province, which had a separate staff of officers, and an administration of its own. The result of the accumulation of testamentary business was that the prerogative court was separated from the general jurisdiction of the official principal, of which it was primarily a section, and in concert with which all its executive powers, apart from the central judicature, were worked, and placed under the management of a keeper, master or commissary, who sometimes was official principal as well, but acted on a distinct commission. *The prerogative court.*

(4.) The jurisdiction of the ecclesiastical courts in respect of marriage, being based on the sacramental and religious character of the ordinance, was never limited or disputed. The claim to determine matters of dower was put forward by Archbishops Boniface and Peckham, but was never conceded by the Crown, and the claim was tacitly withdrawn; the questions of legitimacy which came before the lay courts in the assize of mort d'ancestor were decided by them on the certificate of the bishop of the diocese. *Matrimonial jurisdiction.*

(5.) The ecclesiastical jurisdiction claimed over the laity, *pro salute animæ*, was of the widest description and was exercised through a machinery of the most extensive character. It may be divided into two sections, (1) the correction of immorality which the law of the State did not touch; (2) the correction of breaches of faith and offences against character, for which there were remedies provided by the common law. In the first case, very strong remonstrances against ecclesiastical interferences were occasionally heard, but no serious attempt at restriction was made before the Reformation. In the second, the jurisdiction in case of breach of contract, perjury, slander, and the like, was regarded with more jealousy, especially when the clergy claimed exclusive right to adjudicate in this department, but the simple claim was practically maintained until the Reformation, and in some points even to modern times. *Jurisdiction over the laity pro salute animæ.*

This jurisdiction was exercised as a part and result of the visitatorial and penitential discipline of the church, on the information by presentment at visitation, or by express complaint of a party injured, or willing to give information. It is with causes of



this kind that the records of the consistorial courts are filled, and it was no doubt the unpopularity of this part of ecclesiastical procedure, and the array of spies and informers which it tended to create, that gave rise to the petitions against the system which helped to bring about its downfall. The procedure in this material was simple and summary, the penalties imposed were of a penitential character, and were capable of commutation for money payment at the discretion of the court.

*Jurisdiction over the ecclesiastical offences of the clergy.*

(6.) The question of jurisdiction over clerks transgressing ecclesiastical law was entirely in the hands of the church courts, which claimed exclusive jurisdiction over the person as well as the conduct of the clerk accused.

*Jurisdiction over the persons of the clergy in criminal matters.*

(7.) The exclusive jurisdiction claimed over the conduct of the clergy affected also the case of offences committed by the clergy against the law of the land; and incidentally, as protectors of the clergy by the ancient law, the bishops claimed jurisdiction in cases of offences committed against them. The contests to which this jurisdiction gave rise form one of the first points at issue between Henry II. and Becket; and the subject of the third constitution of Clarendon. This constitution, if not absolutely renounced in 1172, was so far modified that in 1176 the king agreed that no clerk should henceforth be imprisoned or brought before a secular tribunal for any criminality or trespass, except trespass of the forest and questions of lay fees for which lay service was due; by the same act the murderers of clerks are to incur forfeiture of their inheritance over and above the customary penalties, and the clergy are not to be compelled to ordeal of battle. This concession practically recognised the right of benefit of clergy as enjoyed and amplified to the period of the Reformation.

*Jurisdiction in heresy.*

(8.) The jurisdiction in the matter of heresy, whether over the clergy or over the laity, is, so far as the ecclesiastical courts go, of exactly the same character and process as the jurisdiction in moral and criminal offences; but it is complicated in some respects partly with the legislation of the Parliament as to the amount of assistance to be rendered by the secular arm, and partly by the question by what authority an inculcated doctrine should be declared heretical.

*Novelty of proceedings in heresy.*

The jurisdiction over the heretic was not in its nature different from that over the criminal, but, owing to the fact that prosecution on this charge was a novelty in England in the 14th century, it appears that as a matter of fact it was seldom or never entertained by a judge below the rank of a bishop or in a court lower than the consistory.

*Procedure established by Archbishop Arundel.*

But further than this, it would seem that there was, generally, a great aversion to extreme proceedings on charges so wide and so difficult of proof, except on confession of the accused; and a consequent difficulty in reducing the method of examination and proof to the usual procedure of the courts. This was partly met by the ordinary of the person accused carrying the trial at once before the archbishop either in his convocation, in his ordinary audience, or in a less formal way for personal hearing. This occasions a great diversity in the early forms of trial for heresy; and it is not before the middle of the 15th century that a uniform and simple procedure seems to have been adopted. This procedure was based on the constitution published by Archbishop Arundel in 1408, which directed that the prosecution for heresy should be conformed to that of the civil law in case of lese Majesty; the heretic defamed, denounced, detected, or vehemently suspected, was to be cited personally, or by an edict published in the parish church; on certificate of the execution of the summons, proceedings were to follow against the party even if absent or neglecting to appear, without the noise and forms of judicature or "contestatio litis;" and, upon the hearing of evidence and canonical proof, the ordinary was to sentence him without delay and punish him according to the quality of the offence. As the issue of the sentence of excommunication was the furthest point to which the ecclesiastical judge could proceed, it was at this point that the legislative enactments of the statute law against heresy began their operation. These statutes were the Stat. 5 Rich. II. s. 2. c. 5, the Stat. 2 Hen. IV. c. 15, and Stat. 2 Hen. V. c. 7, which provide the machinery by which in this case the ecclesiastical law is to be enforced. Of these statutes the first authorises the Chancellor to issue commissions for the arrest of heretic preachers on the certificate of the prelates; the second allows the bishops to arrest and imprison such persons, and directs that, in case of refusal to abjure or of relapse after abjuration, in which case the culprit should according to the canons be left to the secular arm, the sheriff or other secular magistrate should after sentence receive him and have him burnt. The third statute imposes an oath on secular officers to assist the ordinaries in the repression of heresy, and among other provisions it is directed that justices of assize shall have power to inquire of all who hold any errors and heresies, to award a capias against them if indicted, and deliver them to the ordinaries for trial.

*Statutes of heresy.*



A constitution of Archbishop Chichele in 1416 prescribes further proceedings to be taken by the ecclesiastical authorities, analogous to those prescribed in the act to the lay magistrates, directing that the persons arrested and imprisoned, if they are not left to the secular court, be detained until the next convocation, as the quality of the matter demands.

*Constitution of Archbishop Chichele.*

The decision whether a point alleged was or was not heretical lay with the ecclesiastical judge, guided by the creeds, councils, and in particular by the constitutions and definitions drawn up by Archbishops Courtenay and Arundel against the followers of Wycliffe.

*Determination of points of heresy.*

The question has been mooted whether in these proceedings the archbishops were acting as papal legates, as inquisitors of heretical pravity, or as ordinary judges. But it is certain that the diocesan bishops in taking cognisance of heresy acted as judges ordinary, for they had no commission from either the Pope or the archbishop as officers of an inquisitorial or legatine system. According to the repute of the canon law every bishop was *inquisitor natus* in his own diocese. It may be inferred with certainty that the archbishops had similar inherent jurisdiction.

*Inquisition into heretical pravity.*

We fail to find in any of the eight diocesan registries which have been searched, any record of cases of appeal made against sentence for heresy, nor have any been observed in respect of immorality, either from the diocesan court to the provincial court, or from either to the court of Rome, in which the appeal was suffered to proceed. In the very few cases in which such appeal was attempted, the *apostoli* or letters dismissory of the appeal were refused.\*

*Question as to appeal in heresy.*

Two important points remain to be noticed before proceeding to examine the changes in the ecclesiastical judicature which took place at the Reformation: the question of appeal from one ecclesiastical court to another, and the question of prohibition or interference by the secular power with the exercise of ecclesiastical jurisdiction or execution of sentences.

The right of appeal from the actual decision of an inferior court to the superior court was, as we have seen, little known or practised in the early middle ages. The primitive way of disputing a decision was to challenge the court itself; but, from the time of the Conquest, in both spiritual and secular matters a system of appeals gradually began to develop in both regions of jurisprudence, following to a great extent the outlines of the Roman law.

*Growth of appeals.*

The right of appeal, or provocatio, exercised by a person either oppressed by, or apprehending oppression from, his immediate superior was from an early period after the Conquest constantly employed to stay the action of the superior, even before the matter in question had begun to receive judicial treatment. In this way whoever felt himself in danger from his bishop would appeal to the archbishop or the pope, put himself, that is, under his protection, and stay all proceedings to his prejudice in the court from whose threatened action he appealed. This was, in legal language, the extra-judicial appeal, or appeal a gravamine; and to this class belong nearly all the recorded appeals made to the see of Rome during the prevalence of the Norman system of government as well as a very large proportion of the whole number of appeals recorded in medieval history.

*Practice of appeals.*

*Extra judicial appeals.*

The right of appealing from a definitive judgment, or from an interlocutory decision having the effect of a definitive judgment, was known as the judicial appeal, and, when normally employed, formed a regular proceeding in the gradation of the courts.

*Appeal from definitive judgment.*

In the case of the extra-judicial appeal notice was given by the appellant to the person or court from whose action he appealed, and, when this had been received and admitted, it had the effect of making further proceedings on the part of the appellee void; the appellant sent his statement of his grievance to the court appealed to, and in fact acted much like the plaintiff in an original action; a formal statement was also sent in by the appellee.

*Process in extra judicial appeal.*

Where the complaint was made against a formal decision in court the appellant made his appeal within a certain time after the issuing of the sentence, and demanded *apostoli* or letters dismissory from the court, containing, with leave to appeal, the statement of the circumstances of the case on which the decision was given.

*Process in judicial appeal.*

Of the earlier recorded appeals to Rome the greater proportion were extra-judicial.

It being premised that the cognizance of questions of advowson, of legitimacy, and dower, in fact, all questions that concerned the title to real property, was by the secular legislation of Henry II. withdrawn entirely (save by way of certificate) from

*Matter of appeals.*

\* Historical Appendix II., *post*, p. 52.



the church courts, and was, notwithstanding the attempts made in the 13th century, never recovered; the following are the ordinary subjects of appeal:—

Disputed elections to episcopal sees.

Matrimonial and testamentary causes.

Disputes relating to the authority of the bishops and abbots in cathedral and conventual churches.

Disputes as to the construction of statutes or customs of precedence and the like in cathedral churches.

Miscellaneous cases, intrusion, &c.

*Attempts to  
restrain  
appeals.*

It is not to be supposed that the kings or bishops were the only people who attempted to stay the prevalence of appeals. The abuse was itself regarded by the popes as offensive, and several measures were adopted for preventing the absolute paralysis of all ordinary jurisdiction which resulted from it. But these restrictions were insufficient to meet the activity of the canon lawyers and others who lived on this sort of litigation. The restraint of appeals was interpreted as a fettering of the action of justice, and with exceptions already noticed the *apostoli* were hardly ever, if ever, refused.

*Extension of  
appeals to  
Rome.*

In the contrary direction, the practice of appeal to Rome was capable of very great extension and development; not only might a matter in dispute be treated over and over again, delegacy superseding delegacy, and appeal being interposed on every detail of proceeding one after another, but even after a definitive decision a question might be reopened and the most solemn decision be reversed on fresh examination. On this system of rehearing there was practically no limit, for, however solemn the sanction by which one pope bound himself and his successors, it was always possible for a new pope to permit the introduction of new evidence or a new plea of exceptions. In this way the Roman Court remained a resource for ever open to litigants who were able to pay for its services, and the popes avoided the imputation of claiming finality for decisions which were not indisputable.

*Operation of  
the statutes  
of præmu-  
nire.*

The statutes of *præmunire* (25 Edw. III. st. 6.; 16 Ric. II. st. 2. cc. 2, 3) did not preclude the possibility of appeals made with the licence of the Crown, or upon subjects which the courts of the realm were not competent to entertain. Many cases continued to be carried to the papal courts, and it is probable that the great schism, followed by the constitutional struggles of popes and councils in the 15th century, had more effect in stopping appeals than the statutes had. That they were diminished in number appears certain from the urgency with which Pope Martin V. impressed on Archbishop Chichele the need of repealing these statutes. The Crown had to some extent connived at the breach or suspension of them, as was done, sometimes with and sometimes without the consent of Parliament, in the case of the statute of provisors.

*Prohibitions  
by the  
Crown.*

The last point to be considered in relation to this period is the question of prohibition:—the royal power of intervening to stay the proceedings of the ecclesiastical court, where that court by an aggressive act of jurisdiction was either encroaching on the province of the secular court, or was threatening to prejudice the rights of the subject in ways against which he might justly invoke the aid of the Crown.

*Attempts to  
regulate the  
exercise of  
ecclesiastical  
censures.*

The attempt of the Crown to maintain a guard over the ecclesiastical courts by the presence of one of its own officers at all trials, as it was made by Henry II., does not seem to have succeeded, and probably, like the discretion as to the issue of the writ for imprisoning the excommunicate, it had become an almost useless weapon. In the right of prohibition the Crown possessed another weapon which might be put in use by the defendant in an ecclesiastical action without calling for a constant vigilance on the part of the officers of the Crown. Sometimes, however, it was used by way of anticipation. Thus Geoffrey FitzPeter as justiciar prohibited Hubert Walter as legate from holding pleas; and in Glanville the germ of the later practice may be further traced.

*Attempts to  
limit the  
subject mat-  
ter of eccle-  
siastical  
jurisdiction.*

But the great era of the common use of prohibitions begins with the reign of Henry III., in which, owing to the constant aggressions of the archiepiscopal jurisdiction, they were extremely necessary. Henry III. in 1246 and 1247 issued ordinances expressly confining the ecclesiastical courts, in matters of civil interest, to the jurisdiction long established in their hands in testamentary and matrimonial causes; but besides this the rolls abound with instances of special prohibitions chiefly on the following points:—

*Matters of  
prohibition.*

Against the entertaining of suits touching freehold; touching the king's peace; touching debt cognisable by common law; touching tithe of *essarts*; touching the prohibition by the archbishop about selling provisions to the canons of St. Oswald; for admission of plea after it had been decided in the king's court, &c., &c. These



prohibitions, it will be seen, have little reference to spiritual questions, but in the following cases there is some shadow of such interference:—Prohibition on a suit for compelling a royal chaplain to reside; on oath administered *de parendo juri ecclesiastico*; on excommunications issued. The chief historical interest of the subject of prohibitions belongs to the reigns of Edward I. and Edward II., and to the so-called statutes *circumspecte agatis and articuli cleri*.

We now proceed to examine the effects produced by the legislation of Henry VIII. and his successors on the ecclesiastical judicature.

We have printed as an Appendix \* to this Report the statutes of this period which have a bearing on this subject, and the several acts of the clergy by which their consent was given to the changes in progress.† We have added also an approximately exact account of the order in which, and the circumstances under which, those statutes of the reign of Henry VIII. were passed, on which the legislation of the Reformation is chiefly based.‡ In following up the subject we shall observe the arrangement already adopted in our account of the origin and growth of the judicature, and mark the changes produced (1) on the law administered; (2) on the constitution of the courts; and (3) on procedure. It will, however, be most convenient to treat the measures of the several Tudor sovereigns in distinct detail.

1. The Submission of the Clergy, executed on the 15th of May 1532, and confirmed by and incorporated in the statute of 25 Hen. VIII. c. 19.,§ contains three clauses, the second and third of which directly affect the ecclesiastical law. The second clause provides that all the existing canons and constitutions shall be revised by 32 persons, 16 to be of the upper and nether house of the temporality and 16 of the clergy, all to be appointed by the king, so that finally “whichever of the said constitutions should be thought and determined by the most part of the said 32 persons worthy to be abrogated and annulled should be taken away and have no force or strength.” By the third clause it is agreed that all other constitutions which shall be proved by the said 32 persons or a majority of them to stand with God’s law and the king’s shall stand in full strength and power, the king’s assent being first given; and by the last section of the statute it is provided that until the revision is completed all the existing canons and constitutions not repugnant to the law or to the royal prerogative shall still be used and executed. The powers conferred by this statute on the king were by the 27th Hen. VIII. c. 15. renewed for three years after the dissolution of the existing Parliament, and again by 35 Hen. VIII. c. 16. for the king’s life. These powers were not, however, exercised by Henry VIII. in the form prescribed by the Act. The authority recognised as existing in the king for canonical legislation is analogous to the authority as to doctrinal definition recognised by the Act of the Six Articles, 31 Hen. VIII. c. 14., and by the Act concerning Christ’s Religion, 32 Hen. VIII. c. 26., in both which a supreme authority is supposed to reside in the king, acting with the advice of divines. The legislative authority thus claimed may be illustrated by the royal ordinance for the observance of holy days, issued August 11, 1536, by letters patent under signet, the enacting words of which are “it is therefore by the king’s highness’ authority as supreme head on earth of the Church of England, with the common consent of the prelates and clergy of this realm in Convocation lawfully assembled and congregate, among other things, decreed, ordained, and established”; but this form, although consonant with the king’s theory of his own position, is not warranted either by the Submission of the clergy or by the statute which confirmed it.

As the second and third clauses of the Submission affect the existing body of ecclesiastical law, the first clause affects the legislative authority which, however limited, had hitherto existed in the National Church, and also the administration of the law. It is conceded by the clergy and secured by the statute that the clergy shall not henceforth enact, put in ure, promulge, or execute any new canons or constitutions, provincial or synodal, in their Convocations or synods in time coming, which Convocations have been and must be assembled only by the king’s high commandment of writ, unless they have the king’s licence to assemble, and to make, promulge, and execute such constitutions. This concession thus contains the admission of the king’s right to licence, or to forbid, the meeting of Convocation, the drawing up, the publication and execution of canons, all which might have been done probably by the old prerogative; it does not, however, recognise the king’s right to draw up or impose or enforce canons not accepted by the clergy.

One direct result of the measure was that the study of the canon law almost imme-

(III.) EC-  
CLESIASTICAL  
JUDICATURE  
AT AND  
AFTER THE  
REFORMA-  
TION.

(a.) REIGN  
OF HENRY  
VIII.

1. Law admi-  
nistered.

*Project of  
reform of the  
ecclesiastical  
law, in the  
Submission  
of the  
Clergy.*

*Legislative  
position of  
the king in  
relation to  
church law.*

*Submission  
of the clergy  
as to the  
enactment  
and execu-  
tion of eccle-  
siastical  
laws.*

\* Historical Appendix XII., *post*, p. 209.

† Historical Appendix III., *post*, p. 70.

‡ Historical Appendix IV., *post*, p. 74.

§ See *post*, p. 216.



diately fell into desuetude, and the universities were forbidden to confer degrees in that faculty.

2. Constitu-  
tion of  
courts, and  
3. Proce-  
dure.

*Continuance  
of the an-  
cient courts.*

*Modifica-  
tions by the  
Reformation  
statutes.*

*Statute of  
citations.*

2. 3. The ancient ecclesiastical courts continued during the reign to exist and to do their work, and their authority is recognised in several statutes, although their actual efficiency may have been affected seriously by the uncertain condition of the law which they administered, and which, as being under process of revision, must have been regarded as existing only provisionally. The statutes which concern the law of probate, marriage, heresy, and tithes contain clauses which recognise the ancient judicature, but which do not materially affect its structure or procedure.

The actual working of the courts was, however, materially affected by several important measures of change.

The statute of citations, 23 Hen. VIII. c. 9.,\* forbids the citation by the provincial courts of persons resident in the dioceses of the suffragan bishops, except in cases of proved neglect, or on appeal, or on grievance alleged against the ordinary, or where the diocesan bishop is a party to the suit, or at the request of the bishop whose jurisdiction is superseded. For cases of heresy, with the consent of the ordinary, or in case of the ordinary neglecting his duty, the archbishop may cite any person dwelling within his province. This enactment is important in relation to foregoing history as well as to subsequent practice. It puts an end to the direct and immediate exercise of the archbishop's jurisdiction in the dioceses of his suffragans, a general power which had been sometimes regarded as a result of the legatine authority of the primate; and it is thus connected with the change of style adopted by the archbishop in 1534 from "apostolicæ sedis legatus" to "metropolitanus." In reference to later usage this statute is the authority for proceeding in the provincial courts on letters of request.

*Statute al-  
lowing mar-  
ried men to  
be judges.*

The statute 37 Hen. VIII. c. 17. is entitled "A Bill that doctors of the civil law, " being married, may exercise ecclesiastical jurisdiction." In the preamble of this Act the restriction of the judicial character in ecclesiastical courts to clergy and persons unmarried is treated as one of the abuses of the papal power, which, being repugnant to the king's character and prerogative, is abrogated by the statute 25 Hen. VIII. c. 19. It enacts that such married men, being doctors created or incorporated in any university, as shall be deputed by the king, or archbishop, bishop, or other who has authority to create a chancellor, vicar-general, &c., may lawfully exercise all manner of ecclesiastical jurisdiction and all censures and coercions appertaining to the same. This enactment to a certain extent modified the qualifications required in ecclesiastical judges, although in practice it is probable that such requirements had not been strictly observed. It is, however, further construed as a declaratory statute, and therefore not precluding others than doctors of the civil law from being judges.

*Statute of  
appeals.*

The statute 24 Hen. VIII. c. 12.,† "for the "restraint of appeals," introduced a more serious and important change.

After reference to the Acts of Edward III., Richard II., and Henry IV., and describing the several inconveniences arising from legal proceedings in the papal court, the Act proceeds to enact that "all causes testamentary, causes of matrimony and "divorces, rights of tithes, oblations, and obventions," shall be henceforth determined within the realm by such courts, spiritual and temporal, as the matter in question shall require; as also "that all spiritual prelates, pastors, ministers, and curates . . . shall and may use, minister, execute, and do, or cause to be used, ministered, executed, and done" all matters of divine service, "any former citation, processes, inhibitions, suspensions, interdictions, excommunications, or appeals, for or touching "the causes aforesaid, from or to the see of Rome, or any other foreign prince or "foreign courts, to the let or contrary thereof in anywise notwithstanding."

*Process of  
appeals  
under the  
statute.*

All appeals to Rome thus are to cease, and the course of permissible appeal is prescribed—1. From the archdeacon or his official to the diocesan bishop. 2. From the bishop or his commissary within 15 days to the archbishop for definitive and final determination without further appeal. In the case of a suit arising within the diocese of the archbishop, appeal is allowed from the archdeacon or his commissary to the Court of Arches or of Audience, and from that court to the archbishop; all suits begun before the archbishop are to be determined by him without appeal. In case of an appeal touching the king, appeal is allowed from any of the said courts of the realm to the Upper House of Convocation of the province.

*Matter of  
appeals  
under the  
statute.*

Although the Act lays down the principle that all spiritual causes should be decided within the realm, it provides only for the decision within the realm of the classes of

\* See post, p. 209.

† See post, p. 214.



causes mentioned above, *i.e.*, testamentary and matrimonial, tithes, oblations, and obventions. Appeals, however, on the subject of elections were implicitly forbidden by the statute of annates (23 Hen. VIII. c. 20.).

The statute of appeals creates no new jurisdiction, except in the case of appeals touching the king, in which case the determination is referred to the Upper House of the Convocation. This jurisdiction does not appear ever to have been exercised; the nearest approach to it being the reference of the validity of the king's marriage with Anne of Cleves in 1540 to the clergy of the two Convocations. This, however, was not in course of law, but (1) by reference on petition of Parliament; (2) by special commission of the king to the clergy of the Convocations; (3) to both Houses of Convocation; (4) to the Convocation of both provinces.

*Operation of the statute of appeals.*

The provision of appeal in diocesan cases contains no important innovation, and, as this portion of the Act was shortly superseded, the administration of the law under this rule does not seem to have created any difficulties. The appeal, as it stands, is from the archdeacon to the bishop, and from the diocesan court to the archbishop, and in the archbishop's own diocese from the archiepiscopal Courts of Arches and Audience to the archbishop. It would seem from this that in such cases of appeal within the archbishop's diocese the personal administration of the appellate judge was to be required.

It is to be observed finally that this Act is not repealed by the statute 25 Hen. VIII. c. 19.; that in all the later repeals and revivals it is repealed and revived as co-ordinate with that Act; that it is expressly referred to in that Act as valid; and that therefore in all points in which it is not implicitly repealed thereby it is still in force.

*Continued authority of the statute of appeals.*

The statute 25 Hen. VIII. c. 19.,\* "The submission of the clergy and restraint of appeals," contains by way of preamble, and proceeds to confirm as matter of law, the document known as the submission of the clergy. The Act then proceeds—

*The Statute of Submission.*

- (i.) To extend the process established by the 24 Hen. VIII. c. 12. to all manner of appeals, of what nature or condition soever they be, or what cause or matter soever they concern.
- (ii.) To provide a remedy for lack of justice at or in any of the courts of the archbishops; this is done by allowing an appeal to the King's Majesty in the king's Court of Chancery; upon every such appeal a commission is to be directed under the great seal to such persons as shall be named by the king, as in case of appeal from the admiral's court, to hear and definitively determine such appeals, and the causes concerning the same; the commissioners are to have power to determine such appeal definitively, and no further appeals to be had or made from the said commissioners for the same. Appeals from exempt jurisdictions are to be taken immediately to the king in Chancery.

This Act thus, whilst confirming the order of appeal presented in the statute of appeals, provides a further recourse in appeal from what, under the former Act, was final and definitive. Although the decision to be given by the commissioners was to be definitive, this was not construed so as to preclude the issue of a new commission by way of review. This was an act of supremacy in which the king entered on the exercise of the papal practice of successive delegations.

*Provision of further appeal to the King's Majesty in Chancery.*

The statute 26 Hen. VIII. c. 1., which is entitled, "An Act concerning the king's highness to be supreme head of the Church of England, and to have authority to reform and redress all errors, heresies, and abuses in the same," contains a large interpretation of the supreme headship, and involves as a consequence the exercise of almost unlimited powers of ecclesiastical jurisdiction. The exercise of these powers was committed by the king to Thomas Cromwell, as his vicar-general or vicegerent, by a commission of very extensive character, of which no copy is now forthcoming, but which is known from the character of commissions taken out by archbishops and bishops under Cromwell to have been almost, if not altogether, exhaustive. The powers of jurisdiction granted by this commission were not exercised in such a way as to affect the constitution or procedure of the courts under Cromwell; but it remained as a precedent for the machinery of the High Commission of the reign of Elizabeth, although not formally copied. The powers of visitation, however, were exercised by Cromwell to the fullest extent, especially in the visitation of the monasteries and the universities. Cromwell's tenure of power was short, and the office of vicegerent was not filled up after his fall.

*The statute of supremacy.*

*Institution of the vicegerency in ecclesiastical causes.*

The interpretation of the doctrine of the Royal Supremacy, as developed by Henry VIII., occupies so important a part in the evidence taken before us† and has such a

\* See post, p. 216.

† See Analytical Subject Index of Evidence. Title, *The Royal Supremacy*, Vol. II., pp. 537, 540, 545.



bearing on the whole question of jurisdiction, that we venture to submit the following details of legislation on the subject.

*Development of the doctrine of supremacy. The recognition of the clergy. The renunciation of papal authority. The preamble of the Statute of Appeals.*

The importance of the doctrine embodied in the statute of 26 Hen. VIII. c. 1. was, both practically and in theory, greater than might appear from Cromwell's action. The clergy in Convocation in 1531 had recognised the king as "the singular protector" and only and supreme lord of the Church and clergy, and, so far as is allowed "by the law of Christ, also their supreme head." This recognition, having been amplified by the further acknowledgment made by the clergy in 1533 that the pope has by Holy Scripture no greater authority in England than any other foreign bishop, was further extended by the preamble of the statute of appeals, in which it is laid down that "this realm of England is an empire, and so hath been accepted in the world; governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same, unto whom a body politic, compact of all sorts and degrees of people divided in terms and by names of spirituality and temporality been bounden and owen to bear next to God a natural and humble obedience; he being also institute and furnished by the goodness and sufferance of Almighty God with plenary, whole and entire power, pre-eminence and authority, prerogative and jurisdiction, to render and yield justice and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates, and contentions happening to occur, insurge or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world; the body spiritual whereof having power when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared interpreted and showed by that part of the body politic called the spirituality, now being usually called the English Church, which always hath been reputed and also found of that sort that both for knowledge, integrity and sufficiency of number it hath been always thought, and is also at this hour sufficient and meet of itself without the intermeddling of any exterior person or persons to declare and determine all such doubts, and to administer all such offices and duties as to their rooms spiritual doth appertain, for the due administration whereof, and to keep them from corruption and sinister affection, the king's most noble progenitors and the antecedors of the nobles of this realm have sufficiently endowed the said church both with honour and possessions; and the laws temporal, for trial of property land and goods, and for the conservation of the people of this realm in unity and peace, without rapine or spoil, was and yet is ministered, adjudged, and executed by sundry judges and ministers of the other part of the said body politic, called the temporality; and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other."

In this definition of his position, which bears clear traces of the king's hand, the exclusion of the papal authority is evidently assumed, and the position of the king as head of the conjoint body is elaborated with much care; the temporality is not made simply equivalent to the State, and neither part of the body politic is set up as superior to the other.

*Individual submissions of the clergy. Statute of supremacy.*

In the year 1534 the king exacted from the clergy individually a recognition of supremacy, in which the words "so far as is allowed by the law of Christ" were omitted; and the statute 26 Hen. VIII. c. 1. was passed in the autumn of the same year. This statute enacts, "The king our sovereign lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England called Anglicana Ecclesia, and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of the supreme head of the same church belonging and appertaining; and that our said sovereign lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit, repress, redress, reform, correct, restrain, and amend all such heresies, abuses, offences, contempts, and enormities, whatsoever they be, which by any manner spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquility of this realm, any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

In this Act, therefore, are assigned to the headship two sets of functions, one indeterminate and supposed to be inherent in the title of head; the other determinate



and authorised by the statute, which by recognising the right bestows the authority to visit, repress, reform, order, correct, restrain, and amend all ecclesiastical mischiefs whatsoever.

The statute 37 Hen. VIII. c. 17., "a Bill that doctors of the civil law being " married may exercise ecclesiastical jurisdiction," contains a definition of the royal supremacy, which, as might be expected, is in advance of all claims that preceded it, declaring that the king as supreme head on earth of the Church of England has power, not only to correct, punish, and repress all heresies, errors, vices, sins, &c., but to exercise all other manner of jurisdictions commonly called ecclesiastical jurisdictions; and that the archbishops, bishops, archdeacons, &c. have no manner of jurisdiction ecclesiastical but by, under, and from the king; and that to him by Holy Scripture all authority and power is given to hear and determine all causes ecclesiastical, and to correct vice and sin whatsoever; and to all such persons as the king shall appoint thereto.

*Language of the statute on married judges.*

The power claimed by the king under this title may be regarded as including the following points:—

*Conclusions as to Henry VIII.'s claim of supremacy.*

- (i.) The complete assertion of all the royal powers over the clergy and ecclesiastical things which the laws of England had never ceased to maintain, but which had never, or but grudgingly, been admitted by the curia.
- (ii.) The complete recovery from the papacy of all the authority over the clergy and ecclesiastical causes which had been usurped by the popes from the Crown of England, and in which the usurpation had been admitted or acquiesced in by church and nation.
- (iii.) The complete recovery from the papacy of all authority over the clergy, &c. which had been usurped by the popes from the Church of England in its metropolitan and diocesan constitution.
- (iv.) The assumption of an undefined power and authority in ecclesiastical matters, which had been assumed by the popes as supreme governors of the church, (but which was strange to the ancient constitution of the church and to the liberties of nations), in the character of supreme fountain of all authority and of supreme ordinary of ordinaries.

The legislation of Henry VIII. on heresy is so closely bound up with the legislation on judicature as to require some short consideration here. The king's occasional participation in trials of heresy, although quite consistent with his theory that full ecclesiastical jurisdiction was involved in his supreme headship, is of less importance than the legislative enactments on the subject, which are—

*Legislation of Henry VIII. on heresy.*

25 Hen. VIII. c. 14. An Act for punishment of Heresy. 31 Hen. VIII. c. 14. (the Act of Six Articles); 32 Hen. VIII. c. 26. (concerning Christ's religion); 34 & 35 Hen. VIII. c. 1. (Act for advancement of true religion); 35 Hen. VIII. c. 5. (An Act concerning the Qualification of the Statute of the Six Articles). The chief provisions of these Acts are described in the Historical Appendix I., *post*, page 21.

The details already given are sufficient to render any long treatment of the last point (the procedure of the courts) unnecessary. The conclusion, so far as the history of the courts goes, may be stated thus:—

*Conclusions.*

- (1.) The king assumes, and the Acts of Parliament in the preambles accept the assumption, that all ecclesiastical jurisdiction is conferred and may be exercised by the king himself; and this so far that some of the bishops accept commissions, empowering them as lieutenants of the king or his vicegerent to exercise all the ordinary powers and authority of the episcopate, "præter et ultra ea quæ tibi (sc. episcopo) ex sacris litteris divinitus commissæ esse dinoscuntur."
- (2.) The institution of an appeal to the king in Chancery and the consequent formation of the tribunal known as the high court of delegates created a new court of ultimate appeal in all manner of ecclesiastical causes in which the right of appeal lay. The law which it administered was the ecclesiastical law, and its procedure was framed on the old civil law procedure as developed in the ecclesiastical courts; but the history of this jurisdiction during the reign is to the last degree obscure, and may not improbably have, if exercised at all, been confined to matrimonial and testamentary causes.
- (3.) The measures for revising the canon law under the second provision of the Submission of the clergy were not carried into effect during the reign, notwithstanding the three Acts by which the king was empowered to appoint revisers. The result of this and of the provision for the maintenance of the

*Judicial authority ascribed to the king.*

*Institution of appeal to the king in Chancery.*

*Revision of the canon laws.*



existing canon law, where it did not contradict the law of England or the royal prerogative, until the revision was completed, was, that with those exceptions, the old canon laws remained in force. In one point, the employment of lay judges, the canon law was distinctly repealed, but in most matters the changes consisted in the elimination of the pope's name and authority from all documents and processes in which it would have occurred.

*Extension of civil jurisdiction in spiritual matters.*

- (4.) The new procedure under the Act of Six Articles, &c., was not a modification of ecclesiastical judicature, but the institution of a new jurisdiction, partly in lay and partly in ecclesiastical hands, but owing its existence to the Act of the Parliament. The other Acts which modified the law of heresy did not touch the ecclesiastical jurisdiction, being confined to that part of the process which preceded the action of the ordinary, save and except the withdrawal from the ordinary of the power of imprisoning on suspicion. The objection to the canonical sanctions, expressed in the preamble of the statute against heresy (25 Hen. VIII. c. 14.), does not seem to have any direct effect on the enactments, the determination of the fact of heresy, and consequently the defining of the point in which the heresy consisted, being, apparently, still left to the ecclesiastical judge.

*Permanent results of the measures of Henry VIII.*

As to the permanent results of these innovations, it may be said that the legislation on heresy was very short-lived; the assumption of the absolute headship was never accepted as part of the Reformation settlement; the reform of the canon law was never effected. The foundation of the court of appeal and the practical exclusion of papal interference were nearly all the permanent particulars of detailed change; but the idea of royal supremacy was capable of being worked in many directions, and must be regarded as generally affecting the whole course of English church history from the year 1531 onwards.

*(b.) REIGN OF EDWARD VI.*

The policy of Elizabeth and her ecclesiastical settlement is historically linked on directly to that of her father; but the reigns of Edward VI. and Mary, afford some illustration of the view, taken at the time, of the character of Henry's measures; of the possible development of the principles on which he acted, and of the exaggerated and violently opposed theories which successively worked in church and State before the permanent settlement was reached.

*Climax of the theory of the absolute supremacy.*

The legislation of the reign of Edward VI. is chiefly memorable in relation to our subject as marking the extreme point which was reached by the practical working of the theory of the supremacy developed during the later years of Henry VIII. on the principle of the Act 26 Hen. VIII. c. 1.; between which and the earlier theory accepted by the clergy in 1531 the ultimate settlement or definition by Elizabeth was a sort of mean point. No one of the judicial changes of the reign was in itself permanent, except the procedure under the Act of Uniformity, which, however, was seldom acted upon. It is possible that the spirit of some other parts of the executive system had a more abiding influence; that the idea of the High Commission Court in particular grew out of the schemes for a royal ecclesiastical judicature, which appears in a partially developed form in the executive and judicial commissions issued by Edward, and in the limitation of the episcopal judicature which resulted from the Acts of his second Parliament, and which he himself proposed to carry still further.

*1. Ecclesiastical Law. Progress of the Reformation Legum.*

1. The project of revising the canon law was revived under this king, and in the third Parliament of the reign an Act was passed, 3 & 4 Edw. 6. c. 11. "An Act that the King's Majesty may nominate 32 persons to peruse and make ecclesiastical laws." This Act gave the king for three years powers to proceed in the reformation of the canon law contemplated under the late king, providing that four of the clerical commissioners should be bishops and four of the lay members learned in the common law.

Under this Act several commissions were issued:

- (i.) Oct. 6, 1551, one to eight bishops, eight divines, eight civilians, and eight lawyers.
- (ii.) Nov. 11, 1551, to two bishops, two divines, two civilians, and two lawyers as a committee named with advice of the council.
- (iii.) Feb. 10, 1552, another commission constituted as the first.

In the Parliament of 1552 a Bill for the revision of the canon law, probably a renewal or confirmation of the previous Acts, passed the Commons and was twice read by the Lords. It is probable that the revision, which was now in the hands of Cranmer and Peter Martyr, although not quite ready, was so far advanced as to make it unnecessary to pass the Bill. The work was accomplished and embodied in the *Reformation Legum*, which, however, was not confirmed by Edward or by Elizabeth, and therefore never became law. Perhaps the most important passage of the work bear-



ing on the matter before us is the following scheme of appeal which, if it had been approved and legalised, must have superseded for all ordinary purposes the jurisdiction of the delegates:—"Ab archidiaconis, decanis et his qui sunt infra pontificiam dignitatem et jurisdictionem habent, ad episcopum liceat appellare, ab episcopo ad archiepiscopum, ab archiepiscopo vero ad nostram majestatem. Quo cum fuerit causa devoluta, eam vel concilio provinciali definiri volumus, si gravis sit causa, vel a tribus quatuorve episcopis a nobis ad id constituendis. Quibus rationibus, cum res fuerit definita et judicata, per appellationem amplius cognosci non poterit."

Several changes in the details of the ancient law were of course made explicitly or implicitly in the Acts which concerned the matters of reformation in liturgy, priests' marriages, and other points.

2. 3. The actual constitution of the courts underwent no material change, partly owing to the fact that the revision of the law was supposed to be in process of completion. But both in constitutional theory and in actual working they were largely, although not permanently, affected by some of the Acts of the reign, especially those which concern the authority under which they were held and the concurrent jurisdiction in religious matters assigned to the civil courts; as the Acts 1 Edw. VI. c. 1., against unreverent speaking of the Sacrament, and the two Acts of Uniformity, 2 & 3 Edw. VI. c. 1.† and 5 & 6 Edw. VI. c. 1.‡ The supreme judicature of the king exercised through special commissions of visitation and jurisdiction, and the obligation under which the bishops, or some of them, placed themselves, of taking out commissions for the exercise of their ordinary jurisdiction, paralysed the working of the ancient courts.

The statute 1 Edw. VI. c. 2. abolishes the ancient form of electing bishops, and substitutes for it appointment by the king's letters patent; and further provides, that as "all authority of jurisdiction, spiritual and temporal, is derived and deducted from the king's majesty as supreme head of the churches and realms of England and Ireland, and so justly acknowledged by the clergy of the said realms, and that all courts ecclesiastical within the said two realms be kept by no other power or authority, either foreign or within the realm, but by the authority of his most excellent majesty," all summonses and citations in all causes of instance between party and party, in all causes of correction, in all causes of bastardy or bigamy, patronage, probate, and administration, be made in the name of the king, the teste being in the name of the archbishop or bishop; and all seals of the ecclesiastical courts shall have the king's arms thereon. The archbishop of Canterbury, however, may seal faculties and dispensations with his own seal; and the bishops of each diocese may use their own seals in admitting, ordering, and reforming the officers of their courts, commissioning suffragan bishops, and sealing presentations, collations, gifts, institutions and inductions, letters of orders and letters dimissory. All certificates of the spiritual courts required for causes depending in the courts of common law are to be made in the king's name and sealed with the bishop's seal engraved with the king's arms. The king himself contemplated the discretionary issue of commissions for ordinary jurisdiction, noting in his memorandum book his wish that no authority be "given generally to the bishops, but that commission be given to those that be of the best sort of them to exercise it in their dioceses."

The special commissions issued by the king for visitation and jurisdiction to some extent superseded the jurisdiction of the ordinaries.

In 1549, April 12, the king issued a commission of heresy to seven bishops and 18 others; and in 1551, Jan. 18, to six bishops and 25 others, for inquiry into all articles of heresy, for examining sworn witnesses, receiving abjurations, absolving and imposing penances, handing the pertinacious and obstinate to the secular power, and punishing the clergy who had contemned, despised, opposed, or spoken against the book of common prayer. The commissioners, being bishops, divines, doctors of law, councillors, secretaries, and others, are constituted cognitors, inquisitors, judges, and commissaries to act "omni appellatione remota," three to be a quorum. The commission contains words in striking analogy with the old form: as "summarie et de plano, ac sine strepitu et figura judicii" and the clause "non obstante quod denunciatio, indicatio sive accusatio, contra personas prædictas hujusmodi in hac parte non processerit, sive aliquibus aliis statutis aut ordinationibus in parliamentis nostris in contrarium editis sive provisus, in quibus forsan major solemnitas et circumstantia ad hujusmodi exequenda negotia requiruntur."\*

The commissions given to the bishops for the execution of their ordinary jurisdiction, which are framed on the model of Cromwell's commission already referred to,

2. Ecclesiastical Courts; and  
3. Procedure.

*Continuance of the ancient courts, with weakened authority.*

*Church courts held under sole royal authority.*

*Commissions of heresy.*

*Commissions for ordinary jurisdiction.*

\* Rymer, xv. 181, 183. Cardw., Doc. Ann. I., 102-106.

† See post, p. 220.

‡ See post, p. 223.



are of the widest description. In the commission granted to Cranmer the king commits to him and authorises him to use within his diocese the powers which properly belong to the king as supreme head and source of jurisdiction; to ordain, admit to benefices, institute, invest and deprive, to execute testamentary jurisdiction, to decide causes in person or by deputies, to examine and determine all ecclesiastical suits which either by complaint or appeal may be brought before him, and "to execute" all and singular other business, in the premises or about them, necessary or otherwise "opportune, besides and beyond (*præter et ultra*) those which are known from the "sacred scriptures to have been divinely committed to him (*tibi ex sacris litteris* "divinitus commissis"); *i.e.*, the king empowers the bishops to exercise all the powers required for their historical and ordinary jurisdiction, over and above those inherent in their spiritual office.

(c.) THE  
REIGN OF  
MARY.

*Reversal of  
ecclesiastical  
policy.*

The proceedings of the reign of Mary were directed to the restoration of the system which had been materially modified by Henry VIII., and which under Edward VI. had been nearly subverted. In her first year the nine most significant of her brother's Acts were repealed, and in the second year seventeen of the most important statutes of her father's reign. The three old statutes against heresy were also re-enacted, two of which had been repealed by Edward VI. and the third by Henry VIII.

*Restoration  
of the system  
in force in  
1529.*

The object of this series of measures was to restore, as far as could be done, the state of things which had existed in 1529, the 20th year of the reign of Henry VIII., to which reference was made in the comprehensive clause of the statute 1 & 2 Phil. & Mar. c. 8. for repealing all clauses of all Acts that were directed against the papal supremacy. But the impossibility of reviving some parts of the old system was, of course, obvious; the alienated property of the monasteries was secured to its holders, the newly constituted sees were recognised and confirmed, and the recognition of the validity of documents in which the title of supreme head had been inserted was an indispensable concession. A clause was even introduced into the great Act of repeal providing that nothing contained in the Act, or in the documents incorporated in it, should be taken to derogate from the liberties, privileges, prerogatives, pre-eminences, authorities, or jurisdictions which were in the imperial crown of this realm, or belonged to it in the 20th year of Henry VIII., or under any of his predecessors; the authority restored to the pope is, without diminution or enlargement, that which the pope had by authority of the supremacy in the 20th year, and the ecclesiastical jurisdiction of the archbishops, bishops, and ordinaries is to be in the same state, for process of suits, punishment of crimes, and execution of censures of the church, with knowledge of causes belonging to the same, and as large in these points as the said jurisdiction was in the said 20th year.

It is unnecessary for our purpose to trace further the ecclesiastical legislation of Philip and Mary, as it has no bearing on the later history of our subject.

(IV.) REIGN  
OF ELIZA-  
BETH.

*The re-set-  
tlement of  
church go-  
vernment.*

The accession of Elizabeth was followed by a reversal of all that was most characteristic in her sister's policy; but not by a hasty recurrence to the principles of Edward's reign, or even by an unmodified adherence to the system of her father. The doctrinal and ritual changes which were scarcely broached under Henry VIII. had become, under the pressure of the Marian persecution, a necessary part of the reforms expected from the new reign; but the total destruction of discipline which had marked the policy of Edward was a danger to be carefully guarded against, and the convictions of the queen and her advisers were opposed to any unnecessary deviation from the ancient plan of church government. The title of supreme head of the church was by her Protestant advisers represented to her as unscriptural, and was, as she knew, a form most heartily disliked by all those adherents of the unreformed religion, whose support was indispensable to her. She had not, like Edward, any strong bias towards the religious teaching of the continental reformers, and her advisers were for the most part men of compromise. The result of this combination was, in the revision of the Prayer Book, some small but important alterations in the way of compromise. In the re-settlement of church government her action was more free, and her recurrence to her father's principles more decided.

*The statutes  
of the first  
Parliament  
of Elizabeth.*

The statutes passed in her first Parliament are remarkable for their comprehensive, as well as their permanent character, embracing the whole subject of the ecclesiastical constitution, and remaining in all but one important matter, practically in force until the present century.



The first Act of the reign, 1 Eliz. c. 1.,\* is entitled “ An Act restoring to the Crown the ancient jurisdiction over the State ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same.”

It contains 24 clauses, of which the most important are these:—

ss. 1–6. The statute 1 & 2 Philip and Mary, c. 8. is repealed, and 10 specified statutes of Hen. VIII. on ecclesiastical matters are revived; but it is provided that the repeal does not carry the revival of the statutes which are not specified, and which therefore stand repealed. The revived statutes are:—23 Hen. VIII. c. 9., Citations. 24 Hen. VIII. c. 12., Appeals. 23 Hen. VIII. c. 20., Annates. 25 Hen. VIII. c. 19., Submission. 25 Hen. VIII. c. 20., Consecration. 25 Hen. VIII. c. 21., Dispensations. 26 Hen. VIII. c. 14., Suffragans. 28 Hen. VIII. c. 16., Dispensations. 32 Hen. VIII. c. 38., Pre-contracts. 37 Hen. VIII. c. 17., Allowing married men to be ecclesiastical judges.

The statutes whose repeal is confirmed are:—26 Hen. VIII. c. 1., Style of supreme head. 27 Hen. VIII. c. 15., Reformatio Legum (expired). 28 Hen. VIII. c. 10., On the authority of the pope. 31 Hen. VIII. c. 9., On making bishops by patent. 35 Hen. VIII. c. 3., King's style. 35 Hen. VIII. c. 1. s. 7., Oath of supremacy.

Besides these, the statute 1 Edw. VI. c. 1. is revived, and the statutes of heresy re-enacted by 1 & 2 Philip and Mary c. 6. are repealed.

The effect of omitting the revival of 26 Hen. VIII. c. 1., 28 Hen. VIII. c. 10., 35 Hen. VIII. c. 3., and 35 Hen. VIII. c. 1. s. 7., was the abolition of the royal claim to the title of supreme head as affirmed by Act of Parliament, and the necessity of introducing some new forms and machinery for exercise of the ecclesiastical supremacy with which the queen did not intend to part, as well as for the exclusion of the papal authority. To this purpose the remaining clauses of the Act are directed.

s. 7. abolishes all foreign jurisdiction; s. 8. annexes to the Crown all jurisdictions exercised and used for the visitation of the ecclesiastical state; restoring to the Crown in modified form the visitatorial and corrective authority recognised by 26 Hen. VIII. s. 1. as belonging to the supremacy, but not containing the indefinite claims annexed to the title by that Act. The same section empowers the queen to assign commissioners to exercise the visitatorial and corrective power thus recognised; ss. 9–15. authorise the form of oath in which the queen is recognised as supreme governor in ecclesiastical as well as temporal things or causes, and provide for the enforcement of the same, as well as for the punishment of those who act in contravention of its purport; s. 16. continues the provision as to præmunire contained in 1 & 2 P. & M. c. 8. s. 40; s. 19. orders that nothing done by this Parliament shall be hereafter adjudged heretical or schismatical; and s. 20. that the commissioners described in s. 8. shall in defining heresy be guided by Holy Scripture, or the first four general councils or by other general councils on the authority of scripture, or by the Parliament with the assent of the clergy in their Convocation. The remaining clauses are of technical or temporary importance.

The second statute is the Act of Uniformity,† which, whilst providing a proceeding before lay tribunals for the cognisance of offences, recognises and confirms the powers of the ordinary to reform, correct, and punish by censures of the church all offenders against the provisions of the Act.

The other ecclesiastical statutes are concerned with the payment of first-fruits, c. 4.; impropriations, cc. 4. and 19.; statutes of cathedrals, c. 22.; and suppression of the new monasteries, c. 24.

As the whole of Elizabeth's ecclesiastical legislation is based on the first two statutes, it may be convenient here to note the later Acts which concern the subject of ecclesiastical jurisdiction.

5 Eliz. c. 9. reserves the powers of the ecclesiastical courts to punish perjury. 5 Eliz. c. 23.‡ provides for the execution of the writ de excommunicato capiendo, making it returnable in the King's Bench and otherwise securing its enforcement, but saving the power of the ordinaries to receive the submission of the excommunicate and to absolve and release him. 13 Eliz. c. 12., for enforcing the observance of the thirty-nine articles, authorises the ordinaries or the queen's commissioners in causes ecclesiastical to deprive offenders. 23 Eliz. c. 1., “An Act to retain the queen's majesty's subjects in their due obedience,” provides for the safety of the jurisdiction of the archbishops, bishops, and other ecclesiastical judges. 31 Eliz. c. 6., against abuses in elections, &c., provides for the authority of ecclesiastical censures in the

*The statute restoring the royal jurisdiction in matters ecclesiastical. Repeal of statutes.*

*Confirmation of repeals.*

*Repeal of statutes on heresy.*

*Provisions for the exercise of supreme authority.*

*The Act of Uniformity.*

\* See post, p. 224.

† See post, p. 229.

‡ See post, p. 231.



matter. 43 Eliz. c. 4., on charitable uses, also provides for the security of the jurisdiction of the ordinary.

*Modification of the ancient jurisdiction.*

In that part of the judicature which represented the ancient ecclesiastical jurisdiction no structural change was introduced by the Reformation statutes, but its action was modified in some respects by those statutes; projects for further alteration were freely entertained, and some very fundamental changes would have been permanent had it not been for the change of policy under Mary and Elizabeth.

*Authority by which the courts were held.*

The authority by which the ecclesiastical courts were held was that of the archbishops, bishops, and other ordinaries. The statements of the several statutes which declare all authority of the ordinaries to be derived from the king must be taken with such limitation as legal history compels us to make; but the fact remains that the legislation of Mary, which was not repealed by Elizabeth, reversed the legislation by which Edward VI. had enjoined that all process in the ecclesiastical courts should run in the king's name and under seals bearing the king's arms. The statute 1 Mary sess. 2. c. 2. repealed the Act 1 Edw. VI. c. 2.; and the same queen by her instructions for the execution of the ecclesiastical jurisdiction (Mar. 4, 1554) directed the omission of the words "regia auctoritate fulcitus" from ecclesiastical writs. The statute of Mary was repealed by the Act of Uniformity (1 Eliz. c. 2.) only so far as affected the book of common prayer; and although the effect of the repeal of the statute of Mary by statute 1 James I. c. 25. § 8. was incidentally to revive the statute 1 Edw. VI. c. 2., the operation of that reviver has been ruled to be overruled by the statute of 25 Hen. VIII. c. 20. The question was raised in the 4 James I. as to the authority of bishops elected and consecrated in disregard of the Edwardian statute, and it was then determined that the reviver of 25 Hen. VIII. c. 20. had the effect of a repeal which was not annulled by the operation of 1 James I. c. 25. And the same decision was given in 1637 in a report of the judges to the Star Chamber, and in a proclamation issued by the king to the same effect [Aug. 18, 1637].

(V.)<sup>2</sup> LAW AND COURTS SINCE THE REFORMATION, DOWN TO 1832.

1. The law administered.

*The ancient canon law.*

*The king's ecclesiastical law.*

1. The scheme for the *Reformatio Legum* having failed, the canon law, so far as it did not contravene the laws of the land or the king's prerogative, remained in force, according to the provision of the statute of submission. The king's "ecclesiastical laws," not less than the canon law, were administered by the ecclesiastical courts in all particulars, in which by the letter of the statutes the jurisdiction of those courts was confirmed or saved. These laws were ordered to be studied in the universities by graduates in law, by the royal injunctions sent to those bodies; and although the courts of common law, in the discussion of prohibition, insisted more strongly on the right of the lay judges to interpret the Acts of Parliament than to deal with the canons, there can be no doubt that in the spiritual courts both were, where they did not conflict, of equal validity, and, where they did conflict, the statute law overruled the canon. When we remember that the statute law altogether annulled the authority of the pope, it will be seen that it very materially limited the matter of the canon law applicable to the circumstances of the reformed church.

*Canons made in Convocation.*

Besides the ancient canon law and the king's ecclesiastical law, there remained the legislation of the clergy assembled in Convocation by royal authority, licensed to proceed to legislation by royal authority, and requiring for the execution of their canons royal authorisation. This legislation added to the code of ecclesiastical law the canons of 1597, 1604, and 1640; the two former of which, not having received parliamentary authority, are regarded as not binding on the laity, although they fulfilled the requirements of the statute of submission; whilst the latter, owing to the informality of the proceedings under which they were drawn up, and other political causes which were too strong for the clergy to strive against, are regarded as having no authority at all. But besides these, there were under Elizabeth several bodies of canons drawn up in Convocation which, for want of some portion of the royal authorisation, had but imperfect authority. Such canons were those of 1571, to which the queen refused her authority; those of 1575 and 1585, to which she gave her approbation, but which she did not apparently seal; and those of 1597 which she sealed with the great seal. But the whole were superseded and embodied in the canons of 1604, which received full royal sanction.

To these may be added the royal proclamations, injunctions, and advertisements issued either by the assumed authority of the supremacy or under statutory powers given in the Act of Uniformity.

*Further modifications contemplated*

Our view of this portion of the subject would be incomplete without some notice of the attempts at the reform of ecclesiastical judicature made in the Parliaments of Elizabeth and James I.; checked, however, by the peremptory command of the former



to abstain from interference with the church, and eluded or otherwise rendered abortive by the policy of the latter. Thus, in Elizabeth's second Parliament, Bills were introduced for securing that spiritual judges should be graduates and for placing the peculiar jurisdictions under the bishops. *in Parliament under Elizabeth and James I.*

In 1584 a Bill was read in the Commons on appeals from the ecclesiastical courts; in 1589, 1593, 1597 similar projects were discussed. Several propositions were made in the Hampton Court conference for the relief of the Puritan party, which failed to meet acceptance; and during the reigns of James I. and Charles I. a constant struggle was going on in which the jurisdiction, not only of the old ecclesiastical courts but of the High Commission also, was matter of discussion. Neither the proposals for reconciliation nor the schemes for reform and abolition produced any effect on the legislation for the clergy during these reigns. In a return offered to the Commission on the subject of the action of Parliament with respect to Convocation notes will be found as to most of these projects.\*

The ecclesiastical jurisdiction from the reign of Elizabeth onwards included (1) the ancient ecclesiastical jurisdiction of the provincial, diocesan, subordinate, and peculiar courts, exercised under the ancient restrictions and administering the ancient law as modified by the ecclesiastical enactments of Parliament, the new canons of the church, and to a certain extent by royal injunctions. It contained, until the year 1641, (2) the court of High Commission permanently established by Elizabeth on the plan of the commissions issued by Edward VI., but based on the power given to the Crown by statute 1 Eliz. c. 1. § 18; and (3) the supreme court of ecclesiastical appeal, established by the statute 25 Hen. VIII. c. 19., and administered by delegates nominated by the king in Chancery.

2. 3. The courts of ancient jurisdiction which subsisted under this revival were the provincial, consistory, archidiaconal, and peculiar courts which had survived the dissolution of the monasteries and other changes of the period. In this connexion we may notice the question which has been raised, whether the Convocation of the clergy was a court of ecclesiastical jurisdiction during this period. 2. The Courts and  
3. Procedure.

By the statute 24 Hen. VIII. c. 12. the upper house of the Convocation was made a tribunal of appeal in causes touching the king, but this was superseded by the Act of the following year, in which all appeals, whomsoever they touch, are referred to the king in Chancery. The case of the Nullity of the Marriage of Anne of Cleves, which was (colourably) decided by the Convocations of both provinces, was heard by both houses of both Convocations under a special commission issued at the petition of Parliament. *Question as to the judicial authority of Convocation.*

Coke, in the 4th Institute, recognises Convocation as one of the ecclesiastical courts of the realm, and describes its functions thus: "Their jurisdiction was to deal with heresies, schisms, and other mere spiritual and ecclesiastical causes, and therein they did proceed *juata legem divinam et canones sanctæ ecclesiæ*." Serious questions may be raised as to the soundness of Coke's view as to the *jurisdiction* of the Convocation in case of heresy before the statute 2 Hen. IV. c. 15., as explained in the 12th Book of the Reports, p. 56.

The right of Convocation to exercise jurisdiction by examining, censuring, and condemning heretical tenets, and the authors and maintainers of them, was affirmed in reference to Whiston's case by eight judges, four being of the contrary opinion; the four, however, agreeing that heretical tenets and opinions may be examined and condemned in Convocation authorized by royal licence, without convening the authors or maintainers of them.

It does not appear that any distinct spiritual qualification was required of ecclesiastical judges acting as officials or commissaries. The statute 37 Hen. VIII. was interpreted more loosely than its words seem to allow, even the qualification of a degree of D.C.L. being regarded as unnecessary, and the statute being regarded simply as declaratory and affirmative without restriction. *Question as to the spiritual qualification of judges.*

It was an object with the archbishops to alter this; by the canons of 1571 it is ordered that every ecclesiastical judge be acquainted with civil and church law, 26 years old, a graduate, practised in the courts, of good report, and either "in sacro ministerio," or if not, "animo toto et fervente zelo erga religionem feretur,"<sup>†</sup> and that he take the oath of supremacy and subscribe the articles of religion. He is not to pronounce sentence of excommunication, but is to refer that duty to the bishop, who shall discharge such duty himself or give commission "gravi alicui viro in sacro ministerio constituto."<sup>†</sup>

\* Historical Appendix V., *post*, p. 142.

† Synodalia, 1, 118, 119; see also Canons of 1585, p. 141; and 1597, p. 155, and the Canons of 1604, Nos. 122, 127.



*Question  
of issuing  
spiritual  
censures by  
lay judges.*

The inconvenience of having spiritual sentences pronounced by judges who were not themselves spiritual persons was alleged by the Puritan party at the Hampton Court conference, the objections being raised to the persons who issued excommunications, "first, why laymen as chancellors and commissaries should do it; secondly, why the bishops themselves for the more dignity to so high and weighty a censure should not take unto them for their assistants the dean and chapter, or other ministers and chaplains of gravity and account." No agreement as to any change resulted from the complaint, the king merely suggesting that the excommunication might be surrendered for some other equivalent form of coercion.\*

The canon 122 of the year 1604 directs that the sentence of deprivation of benefice, or deposition from the ministry, shall be pronounced only by the bishop with the assistance either of his chancellor and some of his chapter, or of his archdeacon, and two other ministers. This canon does not interfere with the power of decreeing suspension and subsequent excommunication belonging to the ecclesiastical judge, however qualified.

Charles II. in his declaration of Oct. 25, 1660, proposed that no bishop should exercise that part of his jurisdiction which appertains to the censures of the church without the advice and assistance of presbyters, and that no chancellors, commissaries, or officials should exercise any act of spiritual jurisdiction in the cases of excommunication, absolution, or where the pastoral charge is concerned. This limitation, which is in accordance with Ussher's plan of a qualified episcopate, had no result.

*Question  
about the  
bishop's  
right to sit  
in his own  
court.*

It has been affirmed in courts of law that the commission of chancellor or vicar-general could not be regarded as excluding the archbishop or bishop from sitting in his own court.† This is reasonable as an affirmation of law, and instances may be adduced in which the power has been exercised since the Reformation.

It appears, from the Return on the Patents of Officials Principal, made for the present Commission, that in several dioceses it is the practice at the present day to reserve to the bishop himself important sections of judicial work, or a general right to execute in person the offices otherwise deputed.‡

The question whether the Archbishop of Canterbury ever acted personally in the Court of Arches, with or without the presence of the official principal, is not susceptible of a distinct answer. The historical cases in which the archbishop is represented as acting judicially are complicated by the uncertainty whether he was acting as a member of the High Commission, or in his own Court of Arches or of Audience.

4. The court  
of High  
Commission.

*Character  
of jurisdic-  
tion.*

4. The Court of High Commission was created by Queen Elizabeth under the authority of the statute 1 Eliz. c. 1., for the execution of the supreme ecclesiastical jurisdiction, which by that Act, and by the statute 26 Hen. VIII. c. 1., was given, or recognised as belonging, to the Crown. This jurisdiction is defined as being such as "hath heretofore been or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities."

*Character  
of commis-  
sions.*

The Act 1 Eliz. c. 1. empowered the Crown, by letters patents under the great seal of England, to assign, name, and authorise such persons, being natural born subjects, as the sovereign should think meet to execute the authority so recognised. From the extant copies of the commissions issued at various times under this Act, and from the recorded proceedings of the several courts of High Commission, we are enabled to form some idea of the way in which the powers so given were interpreted and used.

*Commissions:  
of Edward  
VI.*

The plan of exercising the royal jurisdiction by special commissioners had been used freely in the reign of Edward VI. and in the early Acts of Mary, and general commissions had been by the former sovereign in 1549 and 1551 issued to persons learned in theology and law, or members of the royal council, to inquire into heresy and exercise full jurisdiction on heretics and contemners of the book of common prayer, with powers of extraordinary and probably of illegal extent. These commissions were not directly authorised by any statute, but issued under the powers supposed to be recognised in the Crown by the 26 Hen. VIII. c. 1.

A similar general commission for proceeding against heretics was granted by Philip and Mary, Feb. 8, 1557, the proceeding in this case being limited to inquiry, and by reference for ulterior action to the courts of the ordinaries.

\* Phœnix I., 144, 147.

† Stephens', I., 589.

‡ Vol. II., p. 659; and see the note at the end of the Return, p. 698.



The powers conferred by the Act were immediately exercised by Elizabeth; the Parliament which passed the Act was dissolved on the 8th of May, and the first extant commission was issued on the 19th July 1559. This commission, which to a great extent follows the form adopted in the commissions of Philip and Mary, is directed to Parker, nominated Archbishop of Canterbury, Grindal, nominated Bishop of London, and seventeen other persons, knights, masters of requests, sergeants, and doctors of law. After reference to the Statute of Supremacy, 1 Eliz. c. 1., the Act of Uniformity, 1 Eliz. c. 2., and to the existence of false rumours and seditious books, the queen appoints the commissioners, or six of them, seven names being mentioned, one of which shall be of the quorum, during pleasure, to inquire, "as well by the oaths of twelve good and lawful men, as also by witnesses and other ways and means ye can devise," into all offences against the two Acts, and into heretical opinions, seditious books, &c. throughout the realm. They are further empowered to hear and determine the premisses; and to inquire, hear and determine, offences committed in churches or against divine service and ministers, and to order, correct, and reform those who absent themselves from church; to visit, reform, redress, order, correct, and amend (in the exact words of the statute) all offences which, by any spiritual or ecclesiastical power, authority, or jurisdiction, can be so dealt with, to the pleasure of God, the increase of virtue, and the conservation of the peace and unity of the realm, "and according to the authority and power limited, given, and appointed, by any laws or statutes of the realm." They are further to deal with vagrants and suspect persons, and to redress the wrongs of the clergy deprived for marriage under the late reign, without appeal; these two provisions are temporary and do not recur in the subsequent commissions. They are next authorised to hear and determine all notorious adulteries and other ecclesiastical crimes, and to use such means of discovering them as they shall think expedient; on proof by confession, or by lawful witness, or by any due means, they may punish by fine or imprisonment, or otherwise; and they are empowered to summon offenders and suspected persons, and likewise such witnesses as they may deem necessary, and examine them on their corporal oath, to commit the obstinate and disobedient to prison, there to remain until released by the commissioners, to take recognisances for personal appearance and for obedience to orders, and to appoint a registrar, and a receiver to account at the Exchequer. These powers are to be executed, "any of our laws, statutes, proclamations, or other grants, privileges, or ordinances, which be or may seem to be contrary to the premisses notwithstanding." All justices of the peace, officers, and faithful subjects are directed to assist, and the present letters patent are to be sufficient warrant.

*Commissions issued by Elizabeth.*

On the model of the first commission all the subsequent commissions are drawn, but they vary from one another in many respects; some being intended to run over the whole realm, others being for the provinces of Canterbury or York separately, and some for the particular dioceses, in analogy more or less close with the ordinary commissions of the peace. As time goes on, the execution of other Acts, besides those of uniformity and supremacy, is confided to the commissioners, and the powers, which are loosely described in the earlier commissions, are explicitly stated or extended. The number of commissioners also is very largely increased.

*Commissions of varied extent.*

The most remarkable exception to the usual form is a commission issued April 29, 1620, in which the king intimates that the intention of the legislature was that such commissions should be of a temporary nature and accommodated to the accidents and varieties of the times and occasions; he therefore expands the powers of the Commissioners, and specifies with some details the offences of which they are to take cognizance. They are to inquire "as well by examination of witnesses or presentments, as also by the examination of the parties accused themselves upon their oath, where there shall first appear sufficient matter of charge, by examination of witnesses or by presentment, or by public and notorious fame, or by information of the ordinary, of all and singular apostasies, heresies, great errors of faith and religion, schisms, unlawful conventicles tending to schism against the religion and government of the church now established." Great part of the action of the Commission is directed against recusants, but the list of offences contains every description of ecclesiastical offence, corruption, contempt, and abuse, and every particular of the earlier commissions is enlarged and developed. A large section is devoted to the cognizance of matrimonial disputes; and there is a provision, new to the idea of the High Commission Court, for the issuing of Commissions of Review, on supplication to the king as of Grace. A similar commission was issued by James in 1625, which contains a provision that during the session of the Convocation of Canterbury, only the bishops assembled in the Convocation shall proceed to the execution of the commission, and that in

*Exceptional Commission in 1620.*

*Exceptional Commission in 1625.*



their Convocation house only; none of the other Commissioners are to meddle with them.

*Action of  
the Court of  
High Com-  
mission.*

The records of the trials before the High Commission Court are preserved, some in the Record Office, some in the Registry at Durham, and some in public libraries. These amply prove that the powers entrusted by the Crown to the Commissioners were freely used. Every offence that could be treated as ecclesiastical was inquired into; every offender, accused or suspected, tried and punished or acquitted; every device for obtaining information was used; every claim for the assistance of secular justice was made and as far as possible enforced; every method of instituting a suit was allowed. The domestic history of the 80 years during which the Court of High Commission existed is full of disputes touching the limits of jurisdiction with the Courts of Common Law, in which, by application for habeas corpus or by prohibition, attempts were made to thwart the action of the commission.

*Its abolition.*

The Court of High Commission was abolished by the Long Parliament in an Act, 16 Charles I., c. 11., which, so far as this court was concerned, was re-enacted by 13 Charles II. c. 12.

*Peculiar  
character  
of the Court.*

The Court of High Commission was for suitors a court of first instance; was open to informers of every class: proceeded on suspicion, information, presentment, or inquiry; and, except for a short time under James I., was subject to no appeal. It did not, however, supersede the courts of the ordinaries, which were held as in ancient times, and subject to ancient limitations. It was not a court of appeal from them, although suits which failed to find satisfactory conclusion before them not unfrequently emerged before the High Commission. In almost all its business its jurisdiction was concurrent, either with the business of the lower ecclesiastical courts, or, in the execution of the religious statutes of the reign of Elizabeth, with that of tribunals created or authorised by those statutes to take cognisance of the offences described.

It remains to be added that, whilst there is among the recorded trials before the High Commission sufficient evidence of the exercise of jurisdiction in doctrinal and disciplinary matters, the largest proportion of offences come under the heads of misconduct and immorality of clergy and laity alike, or of proceedings in recusancy and non-conformity.

5. The Court  
of Delegates.  
*Creation of  
the tribunal  
of appeal.*

5. The Supreme Tribunal of Appeal in Ecclesiastical Causes, from the year 1559 to 1832, was that created by the statute 25 Hen. VIII. c. 19., in the following words:—  
“And for lack of justice at or in any of the courts of the archbishops of this realm, or  
“in any of the King’s dominions, it shall be lawful to the parties grieved to appeal to  
“the King’s Majesty in the King’s Court of Chancery; and that upon every such  
“appeal a commission shall be directed under the Great Seal to such persons as shall  
“be named by the King’s Highness, His heirs or successors, like as in case of appeal  
“from the Admiral’s Court, to hear and definitively determine such appeals and the  
“causes concerning the same. Which Commissioners, so by the King’s Highness, His  
“heirs or successors, to be named or appointed, shall have full power and authority  
“to hear and definitively determine every such appeal, with the causes and all cir-  
“cumstances concerning the same. And that such judgment and sentence as the said  
“Commissioners shall make and decree, in and upon any such appeal, shall be good  
“and effectual, and also definitive, and no further appeals to be had or made from the  
“said Commissioners for the same.” By a subsequent clause, appeals from exempt jurisdictions are provided for in the same way. This statute having been repealed by 1 & 2 Phil. & Mar. c. 8., was expressly revived by the 1 Eliz. c. 1., and the tribunal created by it continued unmodified by subsequent legislation, until by St. 2 & 3 Will. IV. c. 92., and 3 & 4 Will. IV. c. 41., its functions were transferred to the Judicial Committee of the Privy Council.

The tribunal so established is known as the “High Court of Delegates,” and is briefly described by Coke in the 4th Institute, cap. 74, as vulgarly called the Court of Delegates, because there “the Delegates sit by force of the King’s Commission under the  
“Great Seal upon an appeal to the King in the Court of Chancery.” “And these  
“commissioners are called Delegates because they are delegated by the King’s Com-  
“mission.”

*Use of the  
name “De-  
legates.”*

The action of this tribunal would perhaps be more accurately described as a function of the King in his Chancery, and the name of Delegates, as applied to the Commissioners appointed for each case of appeal, is no doubt derived from the usage of the Roman Church and Roman Law in case of appeals, for the regulation of which several sections of the Decretals were drawn up. The use of such Delegations or commissions for the trial of appeals from the Courts of the Admiral and Marshal had been not uncommon in England since the fourteenth century, the business of those



courts being conducted under the civil law, which required the service of proctors and advocates trained in that branch of practice. The special character of the canonical or civilian procedure followed in the ecclesiastical courts no doubt suggested the employment of a similar method when the supreme jurisdiction in ecclesiastical appeals was vested in the King.

The powers of the court of delegates were, by the Statute, full and final. The commissioners were authorised to hear and determine all ecclesiastical appeals from the courts of the archbishops, and their decision was to be good, effectual, and also definitive. As delegates for this purpose they were clothed with the full judicial authority of the Crown, not acting as advisers on a judgment to be otherwise given, but themselves authorised to make and decree judgment and sentence without further appeal. *Powers of the Court.*

But, although the powers of the delegates were full and final, and subject to no further appeal, this character was to a certain extent modified, both in theory and in practice, by the right, which was held to remain to the king, of issuing commissions of review. The practice of appeals to Rome had been always subject to the possibility of such review by the popes, and, notwithstanding the stringent wording of the statute of Henry VIII., the Elizabethan lawyers maintained that, by virtue of the supremacy as they understood it, the power of rehearing the whole case, supposed to be definitively decided by the delegates, remained in the Crown. *Commissions of Review.*

The application for a Commission of Review, which in other respects differed little from a Commission of Appeal or of Delegates, was made by a special petition to the King in Council, which was "referred to the Lord Chancellor, who, after hearing the parties by counsel, reported whether in his opinion the Commission ought to be "conceded or not." (Rothery's Report.\*) The Commission of Review was authorised to hear the whole cause *de novo*, and "to reverse, vary, or confirm the former decision."

The Court of Delegates was accordingly not a court of first instance, nor one in which suits could be tried on letters of request; but its jurisdiction in ecclesiastical matters was limited to appeals from the courts properly ecclesiastical; it could not entertain appeals from the Court of High Commission. *Appellate character of the Court of Delegates.*

The jurisdiction of the Delegates extended to every sort of subject matter which could be dealt with in the provincial court by way of appeal. It has been questioned whether, under the ancient law, any appeal from the court of first instance in the case of heresy was ever allowed; and whether under the legislation of Henry VIII. it was intended that any treatment of heresy by recourse to higher tribunals should be made possible. It is probable that so long as the Court of High Commission existed, any very important cause concerning doctrine or ritual would be carried before the High Commission; and no record of any such appeal heard before the Delegates is to be found during the period of the existence of the Court of High Commission. For every other branch of spiritual jurisdiction, civil or criminal, in matrimonial and testamentary suits, and in the whole subject matter of ecclesiastical litigation, the jurisdiction of the Delegates was, as has been said, full and final; and, if the Statute of Henry VIII. is to be interpreted as establishing a tribunal of appeals, not only on matters on which appeals were customarily allowed at the time, but also on all matters without exception capable of appeal, then the words "upon every such appeal" must be held to authorise their jurisdiction in cases of heresy or of doctrine or ritual, whatever other means, by other Statutes, may have been devised for the enforcement of law. *Subject matter of the appeals.*

The mode by which the action of the Court of Delegates was put in motion is described as follows:—The appeal from the provincial court which might be either from a definitive sentence or from an interlocutory decree having the force of a definitive sentence, was made the subject of a petition to the King in Chancery. This was presented by the proctor of the Appellant, who likewise sent in a draft of the commission prayed for. Unless something unusual was asked for, the commission was presented, without special notice, by the secretary of commissions to the Lord Chancellor; the chancellor signed a fiat, and under the fiat the great seal was set to the commission.\* No consideration appears to have been taken as to the nature of the appeal, or whether it was just or expedient that it should be permitted. *Operation of the Court of High Commission.*

There is no restriction in the words of the statute as to the character and qualifications of the persons who were to be employed as Delegates, unless the words "like as in case of appeal from the Admiral's Court" be construed to imply that persons *Procedure for appeal to the Delegates.*

\* Historical Appendix IX., *post*, p. 179.



acquainted with civil or canon law should be appointed. Otherwise the words "such persons as shall be named by the king's highness" give the greatest latitude; and this latitude, although practically circumscribed by custom and necessity does not appear to have ever been limited by statute or, so far as we are aware, by order of the Crown. The necessity of appointing commissioners acquainted with ecclesiastical procedure was always sufficiently obvious; and as the study of civil and canon law was practically confined to the lawyers of Doctor's Commons, the employment of a quota of delegates from that body was, throughout the existence of this tribunal, invariably adopted. In some of the early commissions either this class of jurists alone was employed, or else the names of other persons joined with them in the commissions who did not act have been omitted from the records. But with the exception of these, the commissions of Elizabeth's reign included also ministers of state, archbishops, and bishops. During this reign only 9 commissions of appeal in which either doctrine or discipline were at all concerned are forthcoming, and in 5 of these the names of civilians only are recorded. Probably the number of appeals in testamentary and matrimonial causes may have been greater. Between the accession of James I. and the year 1640, in 2 cases, not matrimonial or testamentary, the delegates were bishops only, in 4 cases common law judges are joined in the Commissions; in the great majority of cases civilians acted alone. Between 1660 and 1688, in 18 cases the court consisted of bishops, judges, and civilians, and in 19 cases of the last two classes only. Between 1689 and 1714, bishops were joined with judges and civilians in 26 cases, and in 13 cases judges and civilians acted without bishops. Between 1714 and 1750, bishops, judges, and civilians acted together in 8 cases, and with the addition of peers in 20 cases; there being 19 cases in which judges and civilians acted alone. From 1751 to 1838, when the last cause was heard, there were 28 appeals, in 1 of which a peer sat with judges and civilians, and in none of which bishops were included. These particulars are taken from Mr. Rothery's return, presented to the House of Commons in 1868.\* Unfortunately there are no similar materials touching the composition of Commissions for appeals in matrimonial and testamentary suits.

The practice of the chancellors in the selection of Delegates, during the last century of the existence of the tribunal, seems to have been very formal and perfunctory, and complaints of the character of the court were made a century and a half before it was abolished. In 1685 a petition was signed by 12 doctors of laws, praying for stated judges in the Court of Delegates. Bishop Gibson, in the preface to the Codex (p. xxi.), objected to the immixture of peers and common law judges, as opposed to the spirit of the Statute of Appeals (24 Hen. VIII. c. 12.), and to the properly ecclesiastical character of the court. But, whatever opinion may be formed on those points, the custom actually observed and reported in the evidence laid before the Commission of 1832, shows that no regard whatever was paid to the qualification of the judges for their office, and that the most perfunctory routine was regarded as sufficient for the selection of Delegates for supreme ecclesiastical jurisdiction.

*Mode of  
selecting  
the Dele-  
gates.*

*Commission  
of Adjuncts.*

The practice was to appoint the delegates according to a rota, which contained the names of all the puisne common law judges and all the doctors of civil law. In the original Commissions were inserted the names of three of the senior doctors of civil law, three juniors and three common law judges. The seniority and juniority of the doctors was ascertained by entering the names on the rota, according to the date of the degree, and, for the purpose of selection, the first half of the number were considered as seniors, and the rest as juniors; the order of selection was thus, to begin at the two extremes of the rota and work to the middle. When the commission was drawn, it was presented to each of the persons named in it, and if it was declined by such a number of doctors as left the civilians fewer in number than the common law judges, a commission of Adjuncts was applied for by petition, which was always brought specially before the chancellor, and, on his fiat, the process was repeated. (Report of 1832, Evidence, p. 268.)

*Action of the  
Common  
Law mem-  
bers of the  
Commission.  
Proceedings  
for obtaining  
Commissions  
of review.*

The Commission of Delegates required that there should be one common law judge concurring with the opinion of the majority to enable them to give a sentence; in case of an equal division among the judges, or in case no common law judge concurred with the majority, a commission of Adjuncts was applied for.

In the case of Commissions of review more care seems to have been taken; as, however, only one Commission of review is recorded within the century preceding the abolition of the court, no mass of materials for information on this subject is forthcoming, and we have to rely on the papers printed in the case of Matthews against Warner in 1798.

\* Historical Appendix IX., *post*, p. 179.



In this case the delegates had confirmed on appeal a judgment of the Prerogative Court of Canterbury and remitted the case. The appellant thereupon presented to the king "in council his humble petition, praying, for the reasons therein contained, that he would be graciously pleased to grant him a commission of review directed to such lords spiritual and temporal, judges of the common law and doctors of the civil law, of the realm, as to his majesty should seem meet, with the usual clause of quorum, to rehear, reconsider, and determine the sentence pronounced by" the delegates. This petition was read, "present, the king's majesty in council," "where it was ordered by his majesty that the said petition should be referred" to the chancellor to examine into the same and report his opinion thereon to his majesty at that board. That done, the chancellor reported to the king, certifying that he had considered the order and petition, and heard the parties concerned by their counsel, and that the points of law which arose on the proceedings appeared to him "so important to the public that it was fit they should be heard and determined in the most solemn manner; and that he was therefore humbly of opinion that it would be reasonable and proper for his majesty to grant a Commission of review in this cause." In consequence the king was pleased, with the advice of his privy council, to order that a Commission of review should be issued; and a Commission was issued to three bishops, three temporal lords, including the chief justice of the king's bench; three common law judges, including the chief justice of the common pleas and the chief baron; and three civilians, including the judge of the Admiralty, Sir William Scott. Two of the bishops declining or being prevented from acting, and the chief justice of the common pleas having died, a new commission of review was issued later, appointing two other bishops in the place of the two defaulting bishops and a puisne judge in the place of the chief justice of the common pleas. (From the Printed Case: early Commissions of Review are in the *Fœdera* XVII., 519; and XIX., 78.)

The judges in the Court of Delegates did not publicly assign the reasons of their sentence, but in deliberating on their judgment they assigned their reasons to each other and in the presence of the registrar. (Report of 1832. Evidence, pp. 62, 255.)

The Court of Delegates had subsisted for about three centuries with no material alteration imposed by legislative authority, but with customs and rules of its own, the result of long-continued usage and of the practical reforms introduced by successive chancellors in the working of the Commissions. It was in 1830 made the subject of examination by the Royal Commission, which reported in 1832.\* The evidence given before this Commission tends to show that, although the proceedings of the Court of Delegates were somewhat expensive and dilatory, no substantial charge of injustice or excess of powers could be laid against it. We are informed that it seldom reversed the judgments of the provincial courts; that it was, so far as the civilian element went, frequently composed of junior and inexperienced doctors; that its proceedings were undignified, that especially the mode of payment (a guinea a day paid by the victorious party at the close of the cause to each of the judges). The fact, moreover, that the reasons for the judgments were not given seems to have been regarded as infusing an element of uncertainty as to the nature of the law administered by the court. But the witnesses were unable to suggest any substitute that could be represented as satisfactory, and a majority of them declined to agree without material qualifications to the suggestion which seems to have proceeded from the Commissioners themselves, that the functions of the delegates should be transferred to the privy council. Some of the objections were made on the ground of the unsatisfactory condition of the privy council judicature, which was subsequently reformed by the Statute 3 & 4 William IV. c. 41.; some on the ground that the character of that tribunal was not sufficiently ecclesiastical, a representation based apparently on the fact that the civil and canon laws and lawyers had no place in it. Similar objections were made to the adoption of the House of Lords as a substitute for the delegates.

Notwithstanding the balance of opinion against the proposed change, and a very modified acquiescence in the proposal by those witnesses who approved it, the Commissioners having been required, by a communication from the Lord Chancellor, Lord Brougham, to report specially and immediately on the jurisdiction of the Court of Delegates, and the expediency of transferring that jurisdiction to the Privy Council, made a special report, recommending the abolition of the jurisdiction of the delegates and the transfer of the right of hearing appeals to the Privy Council, together with some suggestions for the reform of the Privy Council judicature, and for the abolition of Commissions of review.\* The reasons given for the abolition of the Court of

*The Delegates did not give the reasons for their judgments.*

*Report on the Court of Delegates in 1832.*

*Evidence given before the Commission of 1830-32.*

*Transfer of the jurisdiction of the Delegates to the Judicial Committee of the Privy Council.*

\* Historical Appendix, X., *post*, page 192.



Delegates are the expense and delay caused by the issue of a commission in each suit ; the want of uniformity in its decisions, and the silence observed by the court as to the grounds of its judgments. The reasons given for the substitution of the Privy Council are chiefly the superior qualifications of its members, the permanent existence of the tribunal, and the publicity given to the reasons of the judgments. The Commissioners' recommendation was as a matter of course accepted by the Crown, and the Court of Delegates was abolished for almost all purposes by the Act 2 & 3 Will. IV. c. 92. (the exception being the recourse allowed to the delegates by the provision in the patent of a Colonial bishop).

*Absence of distinct reference to causes of doctrine.*

It cannot fail to be noted that, neither in their examination of witnesses nor in their report, do the Commissioners appear to have given any special consideration to appeals on matters of doctrine, as distinguished from other ecclesiastical causes. All the arguments traceable in favour of or against the transfer of the jurisdiction turn on the advantage of improving the general procedure of the courts in respect to economy and efficiency, and, even where the maintenance of ecclesiastical form is insisted on, it seems to be merely in the sense of retaining the existing machinery.

*Action of the Delegates in causes concerning doctrine.*

It remains to be added that, in Mr. Rothery's elaborate list and abstract of 193 cases heard before the delegates between 1586 and 1838 only seven appeals are discovered "which can be shown to have even remotely involved any question of doctrine." In the first case sentence was given against the appellant; in five other cases the proceedings were discontinued before a final decision was given; and in the one remaining case the delegates varied the decree of the provincial court in a minor point and confirmed the decree of the diocesan court from which the original defendant had appealed, he being the appellant also in recourse to the delegates.\*

6. Legislation on ecclesiastical courts between 1661 and 1834.

6. From the date of the Restoration to the year 1834 no statute was passed which in any important point affected the character of the ecclesiastical courts; the following Acts, however, have a certain bearing on the subject, and one of them, 53 George III. c. 127, effected a considerable change in procedure.

The Act 29 Charles II. c. 9., for taking away the writ "de hæretico comburendo" provides for the maintenance of the ecclesiastical courts in cases of atheism and blasphemy, heresy or schism, and the right to punish by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death. The statute 1 Will & Mar. c. 4. forbids prosecutions for non-conformity in ecclesiastical courts. The Acts 26 George II. c. 33. and 27 George III. c. 44. contain regulations touching jurisdiction in causes of marriage and defamation, and the statute 52 George III. c. 155. s. 13 provides for the continuance of ecclesiastical jurisdiction as unaffected by the legislation of the Act on religious worship and assemblies.

*The writ de contumace capiendo.*

The statute 53 George III. c. 127. (An Act for the better regulation of ecclesiastical courts in England, and for the more easy recovery of Church rates and tithes) directs the disuse of excommunication for non-appearance on citation or contempt in the face of court, or except where such excommunication is pronounced as spiritual censure in definitive sentences or interlocutory decrees having the same force for offences of ecclesiastical cognizance. A writ de contumace capiendo is substituted for the writ de excommunicato capiendo, and the regulations of the statute 5 Eliz. c. 23., are extended to it. In cases where sentence of excommunication is still allowed it is to be certified to the king in chancery as before; and the excommunicate person is not to incur any civil penalty, save such imprisonment, not exceeding six months, as the Court may direct. Section 7 saves the ecclesiastical jurisdiction in determining the validity of church rates. The Act contains some minor regulations as to the conduct of proctors.

*Power of making rules and orders.*

The statute 5 George IV. c. 41. is a Stamp Act, repealing certain duties on proceedings in ecclesiastical courts, and in the High Court of Delegates in ecclesiastical matters.

The statute 10 George IV. c. 53. is an Act to regulate the duties, salaries, and emoluments of the officers, clerks, and ministers of certain Ecclesiastical Courts in England. This Act was the result of the recommendations of two Royal Commissions which had inquired into the duties, &c. of the officers of the Provincial Courts of Canterbury and the Diocesan Courts of London. It directs the formation of tables of fees by the Official Principal of the Court of Arches, the Chancellor of London and the Commissary of the Diocese of Canterbury and of regulations for the performance of duties to be approved by the Archbishop and the Bishop of London respectively. Additional court days are to be appointed by the judges before mentioned for their several courts, and orders for expediting business, which orders, so far as they affect

\* Historical Appendix IX., *post*, p. 179.



appeals, having been approved by the Lord Chancellor, are to be observed by the High Court of Delegates. The Court of Peculiars may be held in Doctors' Commons, and during vacancies of Canterbury or London, the judges and officers are to hold their offices and transact business until new commissions are issued.

1 Will. IV. c. 21 is an Act to improve the proceedings in prohibition and on writs of mandamus.

2 & 3 Will. IV. c. 92 is an Act for transferring the powers of the High Court of Delegates, both in ecclesiastical and maritime causes to His Majesty in Council. This Act likewise forbade the issue of Commissions of Review.

We have not thought it necessary to notice the several statutes which affect the jurisdiction in matters of Church rate and tithe.

*Transfer of the jurisdiction of the Delegates.*

The manner of proceeding in suits for the correction of clerks, prior to the passing of the Church Discipline Act, 1840 (3 & 4 Vict. c. 86.), was in substance the same as in other suits in the ecclesiastical courts. It will be found fully described in the General Report of the Ecclesiastical Courts Commission of 1832, and it is not deemed necessary, therefore, to describe that proceeding in detail.\* But between the date of the passing of the Church Discipline Act and the year 1874 no cause of correction against a clerk for any offence against the laws ecclesiastical could be instituted in any Ecclesiastical Court otherwise than is therein enacted or provided (3 & 4 Vict. c. 86. s. 23). Since 1874 an alternative method of proceeding has been provided by the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85.), in cases of offences against what may be generally described as the ceremonial law of the church. Under neither statute can any proceeding whatever be taken, except with the sanction of the bishop within whose diocese the offence complained of is alleged to have been committed; and the bishop has under both statutes an absolute discretion as to whether he will or will not allow proceedings to be taken (3 & 4 Vict. c. 86. s. 3, Reg. v. Bishop of Oxford, L.R. 5 App. Cas. 214; 37 & 38 Vict. c. 85. s. 9). Under the Church Discipline Act he need not even hear the parties on the question (*ex parte* Edwards, 9 Ch., App. 138).

CHANGES BETWEEN 1832 AND 1880.

Preliminary.

*Bishop's assent to suits.*

If there be any difference between the two statutes, as regards the bishop's authority, it is that it is more unfettered under the earlier than under the later Act. Under the earlier Act the bishop is not bound to give any reasons for the course he adopts. It is enough that he has exercised a discretion. Under the later Act, if he decides against any proceedings being taken, he must state in writing the reason for his opinion, and his statement is to be deposited in the registry of the diocese, and a copy forwarded to the persons complaining and to the clerk complained of (37 & 38 Vict. c. 85. s. 9).

*Bishop's authority.*

Assuming the bishop's sanction to have been obtained it will be convenient to describe separately the procedure provided by the two statutes. The scope of the former Act, it may be remarked, is perfectly general, the scope of the latter very limited. In one case, however, namely, that of questions relating to the fabric of the church, the latter Act applies to the laity as well as to the clergy. Further, the power of making a complaint is under the former Act absolutely unrestricted. Anybody may complain, no matter where he is resident. Under the latter Act the power of complaint is restricted to certain classes of persons who are by reason of residence or official position directly interested in the due observance of the law.

*Scope of Church Discipline Act and Public Worship Regulation Act.*

It should be observed that the remedy by indictment provided by the Act of Uniformity, 1 Eliz. c. 2., remains unaffected by the various changes which have been made in the manner of proceeding in the ecclesiastical courts. It does not appear that any case under this statute has occurred in the period since 1795.†

1. Under the Church Discipline Act, 1840,‡ when a clerk is charged with an offence, or where scandal or evil report exists about him, the first step taken, after notice to the accused, is the issue by the bishop of the diocese where the offence is alleged or reported to have been committed, either on the application of a complainant or of his own mere motion, of a commission to inquire into the grounds of the charges or report. The Commissioners, five in number, are chosen by the bishop, who, however, must appoint as one either his vicar general, or an archdeacon or rural dean within his diocese (s. 3).

1. Church Discipline Act, 1840.

*Mode of complaining.*

*Commission.*

\* Historical Appendix X., *post*, p. 193.

† Historical Appendix VI., *post*, p. 162, No. 20.

‡ *See post*, p. 237.



*Duty and powers of Commission.*

The duty of the Commissioners is confined (s. 4) to ascertaining whether there be or be not *prima facie* grounds for instituting further proceedings. For this purpose they may examine on oath witnesses tendered to or summoned by them, and compel the attendance of witnesses and production of deeds, &c. (s. 17). The hearing is in public, unless the accused desire it to be in private, and, in fact, has all the incidents of a regular trial. Solicitors and counsel are usually present. But the trial does not end in a judgment. The Commissioners merely have to declare publicly their opinion whether a *prima facie* case is made out; and in whichever way they decide, the depositions of the witnesses and a report of the Commissioners' opinion are filed in the registry of the diocese (s. 5); and if the party accused holds preferment in any other diocese or dioceses a copy of the report and depositions is transmitted to the bishop or bishops, as the case may be. A copy can also be had for a small charge by the party accused. It may be observed that in proceedings before the Commissioners each party must bear his own costs.

*Proceedings on report of Commission.*

In the case of a beneficed clergyman the bishop within whose diocese the offence was alleged or reported to have been committed ceases at this stage to have as such any further duty in reference to the proceedings. The matter passes into the hands of the bishop of the diocese where the benefice is situated (usually of course that in which the offence was committed), and if the Commissioners have reported that there is *prima facie* ground for instituting proceedings, the bishop or party complaining may cause articles of charge to be drawn up, filed in the registry of the diocese (s. 7), and served on the party accused (s. 8). Fourteen days after such service "it shall be lawful" for the bishop to require the accused to appear before him and answer the articles (s. 9). The bishop must take this step when called upon to do so by a party who has served articles on the accused. The time for the exercise of any discretion has then passed away. (*Reg. v. Archbishop of Canterbury*, 6 E. & B. 546.) If the accused appears and admits the truth of the articles the bishop forthwith pronounces sentence. If he does not appear or appears and denies the truth of the charges against him, the bishop hears the cause with three assessors nominated by himself, one being an advocate of five years' or barrister of seven years' standing, or a serjeant-at-law, and another, either the dean or one of his archdeacons, or chancellor. On the hearing the bishop determines the case and pronounces sentence (s. 11).

*Hearing by bishop with assessors.**Power of bishop to send letters of request.*

At no period since the passing of the Act has the tribunal thus instituted been much resorted to. In almost all cases suits for breaches of the doctrinal or ceremonial law have been thus dealt with, and, although in cases of offences against morality the bishop's court has sometimes been used, the number of suits heard there has been insignificant compared with the number sent to the provincial court. A principal reason of this, no doubt, has been the power reserved by s. 13 to the bishop to send the cause at once by letters of request either before or after the Commissioners have reported to the Court of Appeal of the province. The expense of an appeal from the bishop (which is given by s. 15) is thus avoided. It may be noted that in the case of an unbeneficed clerk the proceeding by letters of request is the only one possible, the provisions of ss. 5-12 referring only to the case of a beneficed clergyman. The judge cannot refuse to receive letters of request. (*Phillimore v. Sheppard*, L.R. 2 P.C. 450.)

The Act, by providing (s. 13) that a case sent by letters of request should be "heard" and determined according to the law and practice of such Court," made all the pre-existing powers and procedure of the Court of Arches applicable to cases so sent. The Court has become empowered, amongst other things, to inflict all the censures and punishments heretofore capable of being inflicted.

*Arches Court: its power to make rules of practice.*

As regards procedure, however, the Act (s. 13) invested the Dean of the Arches with the widest powers for its improvement with regard to suits under the Act. This power has been exercised by two occupants of the office of Dean of the Arches, Dr. Lushington and Sir Robert Phillimore, and there seems no reason why, if necessary, the procedure should not at any time be so reformed as to secure every requisite of dispatch and economy.

*Appeal.*

The appeal from the provincial court is to the Judicial Committee of the Privy Council (s. 15). Archbishops and bishops who were privy councillors were to be members of the Judicial Committee for the purposes of the appeal (s. 16), but this enactment has been repealed by the Judicature Amendment Act, 1876. The tribunal now consists of lay members with episcopal assessors.

*Period of limitation.*

All suits against a clerk must be commenced within two years after the commission of the offence complained of, or in the case of a conviction having been obtained in a court of common law within six months after conviction (s. 20). The short period of limitation (eight months), prescribed by 27 Geo. 3. c. 44. for suits for fornication,



incontinence, or brawling, does not extend to cases within the Church Discipline Act (s. 21).

The commencement of a suit dates from the issue for service on the defendant of the summons or citation to appear. For the purposes of the period of limitation the preliminary steps are not proceedings in a suit, which is only deemed to begin when a citation is issued. Similarly in a court of law the writ is the commencement of the suit, even in cases where notice of action is required.

*Commencement of suit.*

Provision is made for the case of a bishop being patron of the preferment held by the accused clerk. The archbishop is then to act in his stead (s. 24). But it has seldom been necessary to resort to this enactment, inasmuch as the power of the bishop, even though patron, to send a case by letters of request to a provincial court is reserved. The case of the archbishop being patron appears to be a *casus omissus*. It is provided for in the Public Worship Regulation Act. It should be noted that there are some suits criminal in form which are really brought only to establish some civil right, *e.g.*, suits for dilapidation or perturbation of seats. These are unaffected by the Church Discipline Act (s. 19).

*Procedure where bishop is patron.*

The power of an archbishop under certain circumstances to cite a clerk out of his diocese, given by the statute of Citations (23 Hen. 8. c. 9.), is preserved, as in matters of heresy, or where the bishop "will not or dare not convent" the clerk (s. 19). So also are the powers which may be exercised by archbishops or bishops personally and without process of court (s. 25). This reservation, however, does not authorise an archbishop at a visitation to deprive a dean for simony, without a suit (Dean of York's case, 2 Q.B. 1).

*Power of archbishop under Statute of Citations.*

The Act empowers a bishop, when proceedings have been commenced, to pronounce by consent of both parties a sentence at once, without further proceedings (s. 6). This power would come into play after notice of the bishop's intention to issue a commission.

*Sentence by consent.*

From this summary of the contents of the Church Discipline Act it will be seen that the Act completely changed procedure in "causes of correction." The jurisdiction of the chancellor sitting in the Consistorial Court was swept away and the bishop was required to sit in person in his court with his prescribed assessors. But the action of this new tribunal was paralysed by the power of the bishop to send any case at any time before articles were filed, by letters of request, to the court of appeal of the province; a power which has been so generally exercised as to make it difficult to say whether the tribunal has, or has not, been satisfactory. This restoration of the bishop's personal jurisdiction, which had been long disused, was in accordance with the recommendations of the Commissioners of 1832. It is moreover, as they pointed out,\* in harmony with the canon law, the doctrine of which is, that although the trial of causes of certain descriptions may be properly intrusted to a lay judge, to the bishop himself belong *inquisitio, correctio, punitio excessuum seu amotio a beneficio*.

*Effect of Church Discipline Act.*

"Agreeably to this principle" the Commissioners add "the power of deprivation is reserved by our canons (canon 122) to the bishop in person, and the same principle seems to apply to the case of suspension, and to the infliction of any other censure which may affect a clergyman's spiritual functions."

The canon, however, which forbids a chancellor to pronounce sentence of deprivation without the presence of a bishop, has been held not to apply to the Dean of the Arches, and the latter officer has always exercised the power of deprivation.

It has been established by legal decision that the Court of Arches has power to issue monitions with or without the addition of substantive punishments, and that these monitions can be enforced as orders of the court; in the case of a clerk, by, among other remedies, suspension *ab officio* or *ab officio et beneficio* (*Mackonochie v. Penzance*, 6 App., Case 424).

2. The Public Worship Regulation Act, 1874,† provides for the hearing by a judge appointed in the manner described below of "representations" of alleged infringements of the ceremonial law of the church. After reciting that it is expedient in certain cases to make further regulations for the administration of the laws relating to the performance of divine service, the Act (s. 8) empowers (1) the archdeacon of the archdeaconry, or (2) a churchwarden or three parishioners of the parish within which any church or burial ground is situated (or in the case of cathedral or collegiate churches, three inhabitants of the diocese), to represent to the bishop that (a) within

*2. Public Worship Regulation Act, 1874. Scope of Act.*

\* Historical Appendix X., *post*, p. 193.

† See *post*, p. 243.



the preceding five years alterations or additions to the fabric ornaments or furniture have been made in such church without lawful authority, or decorations forbidden by law have been introduced, or that within the preceding twelve months the incumbent (b) has used or permitted to be used in such church or burial-ground unlawful ornaments of the minister or neglected to use any prescribed ornament, or (c) has failed to observe or cause to be observed the directions of the prayer book relating to the performance of the services, rites, and ceremonies therein ordered, or unlawfully altered or omitted any of such services, rites, and ceremonies. The representation must be, in the case of the three parishioners or inhabitants, accompanied by a written declaration that they are members of the Church of England, and in all cases by a statutory declaration of the truth of the matters represented. These matters, it will be observed, are limited to breaches in some form or other of the ceremonial law, or to unauthorised alterations in the fabric of a church, and the persons empowered to complain are limited to those who may be considered to have a direct interest in the due observance of that law in any particular parish or diocese.

The "representation."

It will be observed that the representation is the basis of all subsequent proceedings. It is therefore necessary in all cases that a long and formal document should be drawn up with great care, and this is a cause of considerable expense. Under the Church Discipline Act the complaint to the bishop could be made in an informal way.

It will also be observed that no provision is made for the substitution of a promoter in the case of the death of the person making the original complaint, a defect to which the procedure under the Church Discipline Act is not subject. (*Elphinstone v. Purchas*, L.R. 3, P.C. 245.)

Bishop's power and duty.

If the bishop thinks that proceedings should be taken he forwards copies of the representation to the parties complaining and complained of, requiring them to state whether they are willing to submit to his directions without appeal; and if they state themselves to be willing, the bishop at once hears the cause, and pronounces such judgment, and issues such monition as he may think proper. If they are not willing, the bishop cannot hear the case himself but must send the representation to the archbishop of the province, who requires the judge to hear the "matter of the representation" forthwith at any place within the diocese or province, or in London or Westminster. The power given to the archbishop to fix the place of hearing was doubtless intended to compel the case to be heard in or near the benefice of the accused clerk, but in practice all cases have been heard in the metropolis. The effect of the case being necessarily sent through the archbishop has in practice been to cause considerable expense and delay.

Appointment and qualifications of judge.

The 7th section prescribes the mode of appointment and qualifications of the judge. He is to be a barrister of 10 years' standing or an ex-judge of the superior courts, and a member of the Church of England. His appointment is "to be, during good behaviour, a judge of the provincial courts of Canterbury and York," and is vested in the two archbishops, subject to the approval of the Crown. If they fail to appoint the Crown appoints. It was also provided that as vacancies occurred in the offices of "official principal" of the two provinces respectively (which were both full when the Act passed), the judge so appointed should become *ex officio* official principal of each province. The two offices having since become vacant, the judge originally appointed under the Act by the archbishops has now become official principal of the Arches Court of Canterbury and of the Chancery Court of York.

It has been decided by the Queen's Bench Division of the High Court of Justice that the enumeration of qualifications in s. 7 is exhaustive, and that the judge, when he becomes, under its provisions, official principal, was not bound, before executing his office, to comply with the provisions of Can. 127 as to signing the articles, &c. Further, it has been decided by the House of Lords that the judge can enforce his orders issued under the statute by the ordinary compulsory process *de contumace capiendo* provided by the 53 Geo. 3. c. 127. In other words, it has been ruled that the Act did not establish a new court, but simply altered the procedure of the old one. (*Green v. Lord Penzance*, L.R. 6, App. Cas. 657.)

Regulations for hearing.

On receipt by the judge of the archbishop's requisition he fixes time and place for the hearing. The place must, of course, be somewhere within the area mentioned in the archbishop's requisition.

The defendant must file an answer, or, if he do not, is deemed to have denied the truth or relevancy of the matters alleged. In the above procedure the Act has in some cases specified the precise number of days within which or after which a step has to be taken. An error as to any of these times is fatal to the whole suit, and has, in fact, led



to more than one suit either failing altogether, or having, at great additional expense to be recommenced.

The judge has powers conferred on him to compel the attendance of witnesses, &c., but his power with reference to sentences is much less extensive than under the general ecclesiastical law. He can only pronounce judgment, issue a monition, and make such order as to costs as the judgment shall require. He cannot in the first instance inflict the ecclesiastical punishment of suspension, whether from office or from office and benefice, or of deprivation. Whatever the number or nature of the offences proved the judge, upon the hearing, must content himself with issuing a monition. In proceedings under the Church Discipline Act he would at once be able to inflict a sentence of suspension or even deprivation for the same offences. But under that statute the case comes to him by letters of request, "to be heard and determined according to the law and practice of the provincial court," and therefore no limitation is imposed on his judicial authority to punish. Means, however, are provided by s. 13 of the Public Worship Regulation Act for enforcing obedience to a monition. If disobeyed, an order inhibiting the defendant from performing service within the diocese may issue for a term not exceeding three months. This inhibition is not to be relaxed until the defendant, in writing, undertakes to pay due obedience to such monition. If the inhibition remains in force for three years from the date of the monition, or if a second inhibition on the same monition is issued within three years from relaxation of an inhibition, the living held by the defendant becomes void. It has been held by the present Dean of the Arches that on the living becoming void, the inhibition comes to an end. It will thus be seen that under the Church Discipline Act the judge can issue a monition and enforce it by suspension, but not by deprivation; and that under the Public Worship Regulation Act, while he can enforce a monition by inhibition (which is the same thing as suspension), such inhibition, if it remain in force, entails deprivation without further proceeding; but neither Act permits deprivation by summary process to be inflicted if the suspension or inhibition is disregarded.

*Powers of judge.*

*Mode of enforcing obedience to judge's monition.*

During the period of an inhibition a curate may be appointed, and the services of the church may be provided for by sequestration (s. 13).

The case of disobedience to an inhibition is not expressly provided for by the statute, but the judge, as is above pointed out, can deal with it in the same manner as with disobedience to any other order by "signifying" the contumacy of the offender to the Court of Chancery (*Green v. Lord Penzance*, *ubi sup.*).

*Punishment for disobeying inhibition.*

An appeal lies from any judgment or monition to the Queen in Council (s. 9).

*Appeal.*

The statute makes provision for the case of a bishop being patron of the benefice held by a defendant: the archbishop of the province is then to act in his stead, or, if the archbishop be interested in the patronage, some prelate appointed by the Queen (s. 16).

*Procedure where bishop is patron.*

In case any representation is made as to breach of the ceremonial law in a cathedral or collegiate church, the visitor is to perform the duties prescribed by the Act to be performed by the bishop (s. 17).

*Cathedral and collegiate churches.*

On the whole it is difficult to see what powers for the repression of offences are conferred by the Public Worship Regulation Act on the Court of Arches that are not comprehended in those vested in it by the Church Discipline Act, and there is no reason, from a comparison of the two Acts, to suppose, nor has it in practice been found, that any saving either of time or expense is effected by the substitution of proceedings under the later for those under the earlier Act.

*Working of Public Worship Regulation Act.*

3. Except in the matters specially mentioned hereafter, no change of importance appears to have been made in the jurisdiction or procedure of the Ecclesiastical Courts exercising civil jurisdiction since 1832. Such jurisdiction is exercised, in the first instance, by the Consistorial Courts of the several dioceses in which the chancellor of the diocese sits as judge. From him an appeal lies to the Court of the Arches, and thence to the Privy Council. The general outline of the procedure in civil cases in the Consistorial Courts and the Court of Arches will, as above stated, be found described in the Report of the Ecclesiastical Courts Commission of 1832.\* In the case of the diocese of London, rules and regulations for the procedure of the Consistorial Court were in the year 1877 framed by the judge, with the approval of the bishop of the diocese, under the provisions of the Act 10 Geo. 4. c. 53. s. 9.† It will be observed

3. Ecclesiastical courts exercising civil jurisdiction.

\* Historical Appendix X., *post*, p. 193.

† See Vol. II., page 705.



that this section extends also to the Court of Arches, which court is, therefore, competent at any time to reform its procedure, in civil as well as in criminal cases, in any way that may appear advantageous.

4. Appeals to the Crown.  
*Transfer of powers of Delegates to Crown in Council.*

*Constitution of Committee of Council.*

*Effect of Acts.*

*Changes of Judicature Act.*

4. The recommendations on the subject of the jurisdiction of the delegates, made in the Special Report of the 25th of January 1831,\* were carried into effect by the Acts 2 & 3 Will. 4. c. 92.,† and 3 & 4 Will. 4. c. 41. The former of these Acts, after repealing so much of the Act 25 Hen. 8. c. 19. as related to any power thereby given to appeal to the Sovereign in Chancery, and so far as the Sovereign was thereby empowered to issue commissions for the purpose of hearing appeals, proceeded to transfer the powers of the High Court of Delegates to the Crown in Council, and to abolish the issue of Commissions of Review. The latter Act established the Judicial Committee of the Privy Council as the tribunal by which these appeals so transferred to the Crown in Council were to be heard. This committee was to be composed of such privy councillors as held or had held the office of President of Council, of Lord Chancellor, of chief of any of the three Courts of Common Law, of Master of the Rolls, of Vice-Chancellor of England, of Judge either of the Prerogative Court of Canterbury or of the High Court of Admiralty, or of Chief Judge in Bankruptcy, with power to the Crown by Sign Manual to appoint two other privy councillors members of the committee. Four members of the committee were to form a quorum (s. 5), and the duty imposed on the body thus constituted was (s. 3) to report to the Crown in Council, it being provided that the nature of the report should be stated in open court. This Act further contains provisions for the procedure of the committee, conferring on it the powers usually vested in a Court of Appeal.

The substantive effect of these Acts was, therefore, to transfer the final decision of such cases as had previously come before the delegates to a certain number of persons constituting a committee of the Privy Council, and on this body were conferred all the powers of the delegates, including, as was subsequently held (*Martin v. Mackonochie*, 3 L.R., P.C. 420), all the powers of punishing for contempt.

Various Acts (6 & 7 Vict. c. 38., 7 & 8 Vict. c. 69., 14 & 15 Vict. c. 83., 34 & 35 Vict. c. 91.) were passed for the purpose of improving the procedure of the committee, but no legislative change of importance was effected until the Judicature Act of 1873 made it (sect. 21) lawful for the Crown to transfer the cases before the Judicial Committee to the Court of Appeal constituted by that Act, it being provided that the Court of Appeal, when hearing ecclesiastical causes, should be constituted of such judges, with such archbishops or bishops as assessors, as should be determined by general rules. These provisions were, however, repealed by the Appellate Jurisdiction Act of 1876, which restored the jurisdiction of the Judicial Committee of the Privy Council, with the alteration that, in lieu of the provisions contained in the 16th section of the Church Discipline Act, that all archbishops and bishops who were privy councillors should be members of the Judicial Committee, and that no cause under the Act should be heard without the presence of at least one such archbishop or bishop, it was enacted (s. 15) that a number, to be fixed by Order in Council, of archbishops or bishops should sit as assessors to the Judicial Committee. An Order in Council subsequently provided for the appointment of five assessors in rotation, with a provision that at least three should be present at the hearing of a cause.

The effect of the repeal of the 16th section of the Church Discipline Act is, that whereas during its being in force the Court of Final Appeal was differently constituted according as the appeal to it was in a cause under the Church Discipline Act, or in any other ecclesiastical cause, such as a faculty suit or a suit of duplex querela, or a suit under the Public Worship Regulation Act, it is now constituted in one and the same way in all cases.

5. Procedure.

*Oral evidence.*

*Enforcing orders by sequestration.*

5. The procedure of the Ecclesiastical Courts has been reformed in the following respects :—

(1.) The Act 17 & 18 Vict. c. 47. altered the practice of the Ecclesiastical Courts as to the taking of evidence, substituting oral for written testimony. The effect of this Act is also, as has been held (*Bishop of Norwich v. Pearse*, 2 A. & E. 281), to render the parties to an ecclesiastical cause, including the defendant in a criminal suit, competent and compellable witnesses.

(2.) By the Act 2 & 3 Will. 4. c. 93. power was given to enforce orders of the ecclesiastical courts by means of sequestration. This provision, which was recom-

\* Historical Appendix X., *post*, p. 193.

† See *post*, p. 236.



mended by the former Royal Commissioners,\* has been held to apply to all persons in regard to whom orders of the Ecclesiastical Courts may be made, including therefore clergymen in benefices in England.

(3.) By the Act 3 & 4 Vict. c. 93. it has been provided that the Judicial Committee or the Judge of any Ecclesiastical Court may, with the consent of the other parties to the suit, order the discharge of a person in custody for contempt. Before this enactment, a person in custody for contempt could be discharged only upon his obedience, and upon payment of the costs incurred by reason of his custody and contempt. (See 53 Geo. 3. c. 127. and *Dean v. Green*, L.R. 8., P.D. 79).

*Discharge of contumacious prisoners.*

(4.) By 39 & 40 Vict. c. 66. and 40 & 41 Vict. c. 25. the right to practice in the ecclesiastical courts, previously confined to proctors, was extended to all solicitors.

*Proctors and solicitors.*

6. It may be desirable to observe that in the period which has elapsed since the Commission appointed by His late Majesty reported, while the area of jurisdiction of the diocesan and provincial courts has been somewhat enlarged, the subject-matter of this jurisdiction has been very greatly curtailed. In the body of that Report it is stated† that the peculiar jurisdictions in England and Wales amounted to nearly 300. By the Act 10 & 11 Vict. c. 98., continued by 21 & 22 Vict. c. 50. and 30 & 31 Vict. c. 143., it was provided that a bishop should throughout all his diocese exercise the same jurisdiction as any bishop could exercise in any part of it, and the 22nd section of the Church Discipline Act provided for the purposes of the Act for the abolition of peculiar jurisdictions, except those belonging to archbishoprics or bishoprics. But by far the greatest part of the subject-matter of the jurisdiction of the ecclesiastical courts was removed by the Acts 20 & 21 Vict. c. 77. and 20 & 21 Vict. c. 85., which transferred the jurisdiction in testamentary and matrimonial causes to another tribunal. Further portions of the jurisdiction of the ecclesiastical courts were taken away by the Act 18 & 19 Vict. c. 41., which abolished suits for defamation, and by the Act 23 & 24 Vict. c. 32., which relieved laymen from proceedings before ecclesiastical tribunals for brawling; and a judgment pronounced by the Dean of Arches in 1876 (*Phillimore v. Machon*, L.R. 1, P.D. 481), while deciding that since the statute 4 Geo. 4. c. 76. the jurisdiction in cases of perjury was taken from the ecclesiastical courts, affirmed the principle that a statute giving jurisdiction to a temporal court in any matter inferentially withdraws that matter from the cognizance of the ecclesiastical courts.

6. Subject matter of jurisdiction.

*Testamentary and matrimonial causes.*  
*Defamation.*  
*Brawling.*

It may be added that the jurisdiction in cases of dilapidations, which was referred to by the Commissioners in 1832,‡ has been greatly modified, if not entirely destroyed, by the effect of the Act 34 & 35 Vict. c. 43.

*Dilapidations.*

The 53rd section of that Act, by providing that no sum shall be recoverable except on an order made by a bishop thereunder, leaves the ecclesiastical, as indeed also the temporal, courts little or nothing to decide in any cases relating to dilapidation that may come before them; and such an order has been held by the Court of Arches to be final.

The Act (31 & 32 Vict. c. 109.) abolishing compulsory church rates, and the Act (6 & 7 Will. 4. c. 71.) for the commutation of tithes, have rendered those subjects no longer ground for causes in the ecclesiastical or other courts.

*Church rates.*  
*Tithes.*

While, however, the subject-matter of the jurisdiction of the Ecclesiastical Courts has been thus curtailed, it is to be observed that an increase has taken place in the number of causes of the classes remaining within the cognizance of ecclesiastical tribunals. The applicability of churchyards for the purpose of mortuaries under the Public Health Acts§ has given rise to many suits. Disputed applications for faculties have been more numerous, and the number of proceedings, both civil and criminal, in which questions of doctrine and ritual have been raised has, during the last thirty or thirty-five years, been out of all proportion to that in previous periods.

*Increase in number of other cases.*

7. The personal jurisdiction of archbishops and bishops, that is to say, jurisdiction statutable, but exercised out of court and without prescribed forms, has been extended, not only by such provisions as those of the Dilapidations Act just mentioned, but also by the Pluralities Act. This Act (1 & 2 Vict. c. 106.), while conferring on bishops

7. Personal jurisdiction of bishops.

\* Historical Appendix X., *post*, p. 201.

† Historical Appendix X., *post*, p. 198.

‡ Historical Appendix X., *post*, p. 200.

§ The Public Health Act, 1848, and the Sanitary Act, 1866, enabled local authorities to provide mortuaries. Section 141 of the Public Health Act, 1875, renders this compulsory on the requirement of the Local Government Board.



power in certain cases to order in a summary way the appointment and removal of curates and the sequestration of benefices, provides for an appeal to the archbishop (sects. 54, 58, 78, 98). Such appeals are heard by the archbishop personally, usually with the assistance of his vicar-general as assessor. It has been held that the bishop, and therefore of course also the archbishop, acts judicially in exercising the powers conferred by this Act. [Bonaker v. Evans, 16 Q.B., 178.]

Under the Incumbents Resignation Act, 1871, also, a jurisdiction is given to the archbishop personally to decide, if the patron object to a resignation by an incumbent, whether such resignation shall be accepted.

It may be observed further that in the case of application for a resignation under this Act, the report of a commission very similar to that under the Church Discipline Act is the initial proceeding.

8. Prohibition.

8. A series of cases recently decided in the temporal courts have thrown light on the relations between the Temporal and Spiritual Courts with regard to the writ of prohibition. While the writ has been enforced in several cases in which the ecclesiastical court was held to have no jurisdiction either from the place of its sitting or some other non-compliance with the statutory conditions of jurisdiction (*Serjeant v. Dale*, L.R., 2 Q.B.D. 558; *Hudson v. Tooth*, L.R. 3, Q.B.D. 46), it has been affirmed by the highest tribunal that the temporal courts will not interfere by way of prohibition with the course, practice, or procedure of the ecclesiastical courts (*Mackonochie v. Lord Penzance*, L.R. 6, App. Cases 424). But it is impossible to peruse these and similar authorities without being impressed with the extreme difficulty (a difficulty evidently felt by one of the learned judges in the case last referred to\*) of determining in particular cases whether a matter goes to the jurisdiction of the ecclesiastical court, and can thus afford ground for a prohibition, or is confined to a question of procedure, and is therefore a subject of appeal only.

INTRO-  
DUCTORY  
REMARKS  
TO RECOM-  
MENDATIONS.

Having now in outline described the principal objections to the existing conditions of ecclesiastical judicature which have been urged with varying degrees of force, and find a more or less general acceptance, and having fully expressed the results of those researches which seemed necessary in order to trace and interpret the facts that presented themselves, Your Majesty's Commissioners are able to proceed to the Recommendations which we apprehend it to be our duty to make as part of our Report.

We do so not without confidence that the verification of these lines of inquiry, by means of the elaborate illustrations and other resources which we present in the appendices, will, by a sound process, conduct others to conclusions not dissimilar to our own as to the construction of an efficient system.

It is obvious that alternative solutions of the difficulties must have presented themselves in the course of our deliberations, but it is with feelings of satisfaction and thankfulness that, as the issue of our labours, we are able to present to Your Majesty the present scheme as a whole. In the course of the following prefatory remarks we have noticed, however, certain points as to which some of our number are of a different opinion from the majority, whilst, in publishing the minutes of our meetings,† we enable it to be seen what was the balance of opinion upon each individual question.

(I.) Pre-  
servation of  
Forms.

I. We desire to point out that throughout our scheme, whenever existing processes are shown to be satisfactory in working, or when the desuetude of old ones is due entirely to accidental causes, we have sought to preserve the continuity and restore the vitality of what was true in principle.

(1.) *Diocesan  
courts.*

(1.) To renew the usefulness of our diocesan courts, extant in form, but practically disused under influences unconnected with their own working, appears to be as just in idea as it is generally desired, and as it would be convenient in practice. And whilst we propose such a constitution for the diocesan courts as shall define their operation, and surround them with every needful safeguard, we desire to recognise the principle that the judicial authority in the court of the bishop resides in and should be exercised by the bishop himself, and that the diocese has a full right to assert this claim upon his superintendence.

*Personal  
jurisdiction.*

*Complaints  
not re-  
stricted.*

The power of making, in the first instance, a complaint in the diocesan court against a clerk in respect of ritual has in proceedings under the Public Worship Regulation Act, 1874, been limited to certain specified persons or combinations of persons; but since nothing has been brought to our notice which leads us to recommend any alteration in the present law which leaves it to the

\* Per Lord Blackburn, L.R. 6, App. Cases, p. 445.

† See post, p. 1.



bishop to give permission to the complainant to proceed, we see no reasons for restraining the most general power of making such complaint in the first instance, as is allowed by the Church Discipline Act.

We are aware that, before the passing of that Act, leave to promote the office of the judge, though it could not be claimed, was seldom, if ever, refused; and that it was competent to promoters to use the powers of the Court, though criminal in form, in order to ascertain or establish civil rights. But since the principal branch of ecclesiastical jurisdiction which now remains to the courts is concerned with the correction of the clergy, it seems reasonable that the Bishop, rather than any private person, should decide whether the interests of the Church in any particular case require that a clerk should be prosecuted. We adopt the words of a judge of the Court of Queen's Bench, that it is "better for the interests of religion and of the public that the Bishop, who is the overseer or superintendent of religious matters in the Church, should be entrusted with a discretion as to the propriety of issuing a commission of inquiry in such cases, than that it should be left entirely, as expressed by Sir William Scott, to the judgment or passions of private persons, who, under the influence of zeal, prejudice, or fancy, might call peremptorily upon the Bishop, without any real or substantial ground, upon mere scandal or evil report, to institute proceedings, which would cause at once expense, trouble, and vexation, and tend to create trouble and vexation in the Church."\* We think that the attempts which have been made to avoid these evils by limiting the class of persons who have a right to complain have not been successful; and that it is better to make the Bishop responsible for his leave to set the discipline of the Church in motion, "trusting to the due exercise of his discretion in all cases where it appears to him that the interests of the Church require it." This view has been largely adopted, and acted upon, by Churches in communion with the Church of England in America and the Colonies.†

A reference to the Minutes of our fifty-seventh meeting‡ will show that some members of our body are in favour of changes in the law by which the assent of the bishop would no longer be required, and that some consider that if it be required and refused by him, his refusal should be accompanied by his decision and direction, which should be subject to appeal. For these changes, and the complications which might probably ensue from them, the Commissioners as a body do not see adequate grounds.

- (2.) Passing on to speak of the necessary final appeal against the decisions of Ecclesiastical Courts, we desire to state that the scheme which we present on this subject should be regarded as a whole. It is not a series of disconnected propositions, such that it might be possible, consistently with the principles we consider essential, to select one portion to be carried out whilst another is neglected or reversed.

(2.) *Appeals to the Crown.*

The scheme is framed on the assumption that every subject of the Crown who feels aggrieved by a decision of any such court, has an indefeasible right to approach the throne itself with a representation that justice has not been done him, and with a claim for the full investigation of his cause. No Ecclesiastical Court can so conclude his suit as to bar this right. But when we recommend that his appeal to the Crown should be heard by an exclusively lay body of judges learned in the law, this recommendation rests mainly on the fact that we have provided in earlier stages for the full hearing of spiritual matters by spiritual judges, *i.e.*, by judges appointed under recognised ecclesiastical authority, and unless we could assume that such ecclesiastical hearing could be assured, we should not have recommended a purely lay hearing in the last resort.

The function of such lay judges as may be appointed by the Crown to determine appeals is not in any sense to determine what is the doctrine or ritual of the Church, but to decide whether the impugned opinions or practices are in conflict with the authoritative formularies of the Church in such a sense as to require correction or punishment. Considering how widely different a matter the legal interpretation of documents must often be from the definition of doctrine, we hold it to be essential that only the actual decree as dealing with the particular case should be of binding authority in the judgments hitherto or

*Decisions in Appeals to the Crown.*

\* *Reg. v. Bishop of Chichester*, 2 El. & El., 209.

† See Vol. II., p. 621, § XIV.

‡ See *post*, p. 12.



hereafter to be delivered, and that the reasoning in support of those judgments and the *obiter dicta* should always be allowed to be reconsidered and disputed.

Reference to  
spirituality  
on disputed  
points.

We have duly provided (in accordance with the policy of the Reformation Statutes, as it may be gathered from the preamble of the Statute of Appeals) for the obtaining on the part of the lay judges, by answers from the archbishops and bishops to specific questions, evidence as to the doctrine or view of the Church of England on questions before them.

And whilst a limited number of our body are of opinion that such reference should be made in all cases of doctrine or ritual,\* we have on the whole judged it expedient to recommend that this obligation should only exist where one or more of the lay judges present at the appeal should demand it.

(3.) Provin-  
cial judges.

(3.) The reasons will now be sufficiently obvious which lead the Commissioners to recommend that the judge of the Ecclesiastical Court of the Province should hold his ancient and original position as invested in that character with unquestionable ecclesiastical authority, whilst his Court is to be subject to an appeal to the purely lay tribunal.

(II.) Autho-  
rity of  
bishops.

II. Your Majesty's Commissioners next desire to recognise the fact that the bishop has a paternal authority inherent in his office which can rightly be exerted to avert litigation.

(1.) Preface  
to Book of  
Common  
Prayer.

(1.) Prior, therefore, to any recommendation as to judicial proceedings the Commissioners feel bound to direct special attention to that passage in the preface to the Prayer Book by which it was evidently intended to provide for the exercise of such paternal authority, to which a clergyman and his parishioners when not agreed on matters of ritual should always have recourse. The passage is as follows :—

“ And forasmuch as nothing can be so plainly set forth but doubts may arise in the use and practice of the same, to appease all such diversity (if any arise) and for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book, the parties that so doubt or diversely take anything shall always resort to the bishop of the diocese, who by his discretion shall take order for the quieting and appeasing of the same, so that the same order be not contrary to anything contained in this book. And if the bishop of the diocese be in doubt then he may send for the resolution thereof to the archbishop.”

This same preface, as it appeared in the Prayer Books both of 1549 and of 1552, contained further the statement that “ the curates shall need none other books “ for their public service but this book and the Bible,” and hence it appears that the book in respect of which the bishop is to take order was and is the whole Book of Common Prayer and Administration of the Sacraments, and that his personal authority is not limited to particular portions of it, such as the Morning and Evening Prayer.

(2.) Right to  
issue state-  
ments on  
matters of  
doubt.

(2.) Again, the archbishop has a right to take counsel with his provincial bishops, and when the circumstances of the time suggest it or reasonable expectations require it, with respect to any matter brought into dispute, to issue a statement or exposition, having regard to the formularies of the church, with a view to allaying disquietude and meeting difficulties.

(III.) Mat-  
ters not  
included.

III. There are two points on which we feel that the absence of recommendations from us may seem to require a word of explanation.

(1.) Trial of  
bishops.

(1.) Trial of bishops. We are of opinion that it is desirable that any scheme of ecclesiastical courts and discipline should make provision for the trial of offences alleged to have been committed by bishops or archbishops, and for compelling on their part obedience to the law, but, on a consideration of the language of Your Majesty's Commission, it does not appear that this subject is properly within its scope, and on this ground only it seems improper to deal with the subject in our Report.

We think it very questionable whether the past history of the Church of England affords any material which could be satisfactorily used to furnish precedent or principle for such a proceeding.

We desire, however, to add that in the history of the early Christian church are to be found both principle and precedent for a provision that such charges and complaints should be tried by a tribunal of the comprovincial bishops.

\* See amendment moved by the Earl of Devon, seconded by the Bishop of Oxford, Minutes of Proceedings of 60th Meeting, *post*, page 14.



- (2.) Convocation. We have thought it right to pay very careful attention to the Resolutions of the Lower House of Convocation of Canterbury formally communicated to us by the late Archbishop of Canterbury, at the request of the Upper House.\* We are also not insensible of the advantage which might ensue from this our Report being ordered by Your Majesty to be laid before the Convocations of Canterbury and York, but we do not consider that it comes within the scope of our instructions to make a formal recommendation on the subject. We desire, however, to call attention to the original researches of one of our body as to the method by which the Upper House of Parliament and the Convocations were enabled to work together between the years 1529 and 1547, and also in the years 1661-2, and the way in which, without trenching on the legislative power of Parliament, the spirituality was able to make its influence felt or to discuss matters of common interest.†

The Recommendations which we have to make may be grouped under three heads, viz.:—(I.) Procedure in cases of misconduct and neglect of duty; (II.) Procedure in cases of heresy and breach of ritual; (III.) General and miscellaneous. They are as follows:—

(I.)

In every case of any clerk in holy orders charged with misconduct or neglect of duty, the person making the charge shall be deemed the complainant, and if the person making the charge shall be unwilling to go on with it, the bishop shall direct some person or persons whom he may deem competent for the purpose to inquire into the truth and inform him upon it: and in the case of any such clerk concerning whom there may exist scandal or evil report, the bishop may direct, if he shall think fit, some person or persons whom he may deem competent for the purpose to inquire into the truth of the scandal or evil report and inform him thereon.

Upon consideration of the complaint, if one be made, or of the information which the bishop has obtained, as the case may be, if the bishop thinks the case is one in which proceedings should be taken, he shall give leave to the complainant to proceed, or if there be no complainant willing to proceed, shall appoint some person to be the complainant.

Whereupon a citation, at the instance of the complainant, shall issue in the name of the bishop from the registry of the diocese warning the clerk accused to appear before the bishop at a stated time and place.

This citation shall be endorsed with a short statement of the particulars of the offence or offences charged.

The citation shall be served upon the clerk, who may either at once submit to the sentence of the bishop, or if he does not submit, shall, in writing, join issue or state shortly the nature of his defence to the charge or charges made in the endorsement.

If the clerk submit to the sentence of the bishop, the bishop may, with the consent of the complainant, pronounce such sentence as he may think fit, not exceeding the sentence which might be pronounced in due course of law, and all such sentences shall be as good and effectual as if pronounced after the hearing, and may be enforced by the like means.

If the clerk does not submit, or if on the submission of the clerk the complainant refuse to consent to the bishop pronouncing sentence without trial, the complainant shall be at liberty to set down the case for hearing before the Diocesan Court.

The Diocesan Court shall consist of the bishop, with whom shall sit as legal assessor the chancellor of the diocese, or some other person learned in the law at the discretion of the bishop; except in cases where the bishop shall call upon the chancellor to hear the case alone.

In the case of mental malady incapacitating the bishop, the archbishop of the province shall call upon the chancellor of the diocese to act alone, save in cases where a coadjutor bishop shall have been appointed under the Act of 1869, in which cases the coadjutor shall have the same powers as the bishop.

The bishop may, if he think proper, send a case direct to the Provincial Court, if both parties consent.

An appeal shall lie from the Diocesan Court to the Court of the Province.

The Provincial Court shall consist of the official principal in the provinces of Canterbury and York, whether those offices be vested in one person or two.

\* See Appendix C. to Minutes of Evidence, Vol. II., p. 399.

† See Historical Appendices IV. and V., *post*, pp. 74-162.



*Appeals to  
the Crown.*

An appeal shall lie from the court of the archbishop to the Crown, and the Crown shall appoint a permanent body of lay judges learned in the law, to whom such appeals shall be referred.

Every person so appointed shall before entering on his office, sign the following declaration :—I do hereby solemnly declare that I am a member of the Church of England as by law established.

The number summoned for each case shall not be less than five, who shall be summoned by the Lord Chancellor in rotation.

When on appeal to the Crown the judgment of the Church Court is to be varied, the cause shall be remitted to the court the judgment of which is appealed against, in order that justice may be done therein according to the order of the Crown.

*Inhibition  
pendente  
lite.*

In every case in which from the nature of the offence charged it shall appear to any bishop within whose diocese the clerk accused may hold any preferment that great scandal is likely to arise from the clerk continuing to perform the services of the church so that his ministration will be injurious to the cause of religion while such charge is pending, it shall be lawful for the bishop, so soon as a citation is issued from the diocesan registry, or at any time pending any proceedings before the bishop, or in any ecclesiastical court, to cause a notice to be served on such clerk inhibiting the said clerk from performing any services of the church within such diocese from and after the expiration of fourteen days from the service of such notice and until sentence shall have been given in the said cause : Provided, that it shall be lawful for such clerk, being the incumbent of a benefice, within fourteen days after the service of the said notice, to nominate to the bishop any fit person or persons to perform all such services of the church during the period in which such clerk shall be so inhibited as aforesaid ; and if the bishop shall deem the person or persons so nominated fit for the performance of such services he shall grant his license to him or them accordingly, or in case a fit person shall not be nominated the bishop shall make such provision for the service of the church as to him shall seem necessary ; and in all such cases it shall be lawful for the bishop to assign such stipend, not exceeding the stipend required by law for the curacy of the church belonging to the said clerk, not exceeding a moiety of the net annual income of the benefice, as the said bishop may think fit, and to provide for the payment of such stipend, if necessary, by sequestration of the living : Provided also, that it shall be lawful for the said bishop at any time to revoke such inhibition and license respectively.

*Proceedings  
on judg-  
ments of tem-  
poral courts.*

If in any trial before a temporal court the verdict of a jury and judgment thereon has established the guilt of a clerk as to any act which is charged against him, and which would be an offence against the laws ecclesiastical, and if the record of any such trial, or an office copy thereof be given in evidence in an ecclesiastical court, the same shall be conclusive evidence as to the matter which was in issue between the parties in such trial, and the court may thereupon proceed to give judgment against the said clerk, and he shall be allowed to give evidence of any extenuating circumstances in mitigation of punishment, and power shall be given to the court to require the production of such record or office copy.

The officer who has the custody of the records of any court of common law shall, upon the conviction of a clerk for any offence, whether cognisable by an ecclesiastical court or otherwise, send a copy of the record of such conviction to the bishop of the diocese within which the clerk was tried and convicted, and the said record shall be preserved in the registry of the diocese.

*Limitation of  
suits.*

Every suit or proceeding against any clerk in holy orders for any offence against the laws ecclesiastical shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards : Provided always, that whenever any such suit or proceeding shall be brought in respect of an offence for which a conviction shall have been obtained in any court of common law, such suit or proceeding may be brought against the person convicted at any time within six calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence in respect of which such suit or proceeding shall be so brought.

*Bishop's  
costs.*

The costs of a complainant appointed by a bishop in a proper case should be defrayed from some public source.

Whether a case be proper for prosecution should for this purpose be determined by the certificate of the vicar-general of the province on the initiation of the proceedings.



## (II.)

Nothing has been brought to the notice of the Commission to lead them to recommend any alteration in the law which leaves it to the bishop to give permission to the complainant to proceed, and, therefore, they see no reason for restraining the general power of making a complaint in the first instance as provided in the Church Discipline Act.

In every case in which the bishop refuses to give permission to a complainant to proceed he shall specifically state in writing his reasons for such refusal, and such statement shall be deposited in the registry of the diocese, and a copy thereof shall be forthwith transmitted to the complainant and to the person complained of.

When proceedings are about to be commenced by any person against any clerk for any offence against the laws ecclesiastical in respect of matters of doctrine or ritual, if both parties agree, the case may be referred to the bishop, who shall have power to hear the matter in such manner as he shall think fit, and shall pronounce such judgment and issue such monition (if any) as he may think proper, and no appeal shall lie from such judgment or monition.

The complainant shall represent to the bishop the particulars of the offence charged.

The complainant shall, when he forwards the representation to the bishop, also furnish a copy thereof to the clerk complained of.

Whereupon a citation, at the instance of the complainant, shall issue in the name of the bishop from the registry of the diocese warning the clerk accused to appear before the bishop at a stated time and place.

This citation shall be accompanied by a copy of the representation which has been made to the bishop.

The citation and representation shall be served upon the clerk, who may either at once submit to sentence of the bishop, or if he does not submit, shall, in writing, join issue or state shortly the nature of his defence to the charge or charges made in the representation.

If the clerk submit to the sentence of the bishop, the bishop may, with the consent of the complainant, pronounce such sentence as he may think fit, not exceeding the sentence which might be pronounced in due course of law, and all such sentences shall be as good and effectual as if pronounced after the hearing, and may be enforced by the like means.

If the clerk does not submit, or if on the submission of the clerk, the complainant refuse to consent to the bishop pronouncing sentence without trial, the complainant shall be at liberty to set down the case for hearing before the Diocesan Court.

The Diocesan Court shall consist of the bishop, with whom shall sit a legal and a theological assessor. The legal assessor shall be the chancellor of the diocese, or some other person learned in the law, at the discretion of the bishop. The theological assessor shall be chosen *pro hac vice* by the bishop, with the advice of the dean and chapter, if there be any.

In case of the inability of a bishop to sit, he shall appoint one of his comprovincial bishops to sit in his place. In the case of mental malady incapacitating the bishop, the nomination shall rest with the archbishop of the province, save in cases where a coadjutor bishop shall have been appointed under the Act of 1869, in which cases the coadjutor shall have the same powers as the bishop.

The bishop may, if he thinks proper, send a case direct to the Provincial Court, if both parties consent.

An appeal shall lie from the Diocesan Court to the Court of the Province.

When an appeal is made or a case is sent to the Provincial Court it shall be forwarded to the archbishop in person, and he shall pronounce whether (a) he will leave it for the decision of his official principal, or (b) will hear it himself, assisted by his official principal as assessor, in which latter case the archbishop may, if he think fit, appoint any number not exceeding five of theological assessors to sit with the court.

Every such theological assessor shall be a bishop within the province, or a professor past or present of one of the English universities.

An appeal shall lie from the court of the archbishop to the Crown, and the Crown shall appoint a permanent body of lay judges learned in the law, to whom such appeals shall be referred.

Every person so appointed shall, before entering on his office, sign the following declaration:—I do hereby solemnly declare that I am a member of the Church of England as by law established.

Cases of heresy and breach of ritual.

*Promoters.*  
*Bishop's assent to proceedings.*

*Hearing and judgment by consent.*

*Representation.*

*Citation.*

*Reply.*

*Sentence by consent on submission.*

*Setting down case for trial.*

*Diocesan court.*

*Provincial court.*

*Appeals to the Crown.*



The number summoned for each case shall not be less than five who shall be summoned by the Lord Chancellor in rotation.

The judges shall have the power of consulting the archbishop and bishops of the province, or, if thought advisable, of both provinces, in exactly the same form as the House of Lords now consults the judges of the land upon specific questions put to them for their opinion\*; and

Shall be bound so to consult them on the demand of any one or more of their number present at the hearing of the appeal.

The judges shall not be bound to state reasons for their decision, but if they do so, each judge shall deliver his judgment separately as in the Supreme Court of Judicature and the House of Lords; and

The actual decree shall be alone of binding authority; the reasoning of the written or oral judgments shall always be allowed to be reconsidered and disputed.

The Commissioners desire it to be understood that they regard the scheme embodied in the foregoing seven resolutions as to appeals to the Crown as a whole.

When on appeal to the Crown the judgment of the Church Court is to be varied, the cause shall be remitted to the court the judgment of which is appealed against, in order that justice may be done therein according to the order of the Crown. *or cause thrown*

*Limitation  
of suits.*

Every suit or proceeding against any clerk in holy orders for any offence against the laws ecclesiastical in respect of doctrine or ritual shall be commenced within one year after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards.

*General and  
miscel-  
laneous.  
Provincial  
judges.*

### (III.)

The Archbishop of Canterbury shall appoint the same person to hold the office of Official Principal and Master of the Faculties.

The Archbishops of Canterbury and York may, if they think fit, appoint the same person to hold the office of Official Principal for the province of Canterbury, and Official Principal or Auditor of the Chancery of York.

A provincial Official Principal shall be one who is or has been a lord of appeal, or has been a judge of the Supreme Court of Judicature, or has been in actual practice as a barrister-at-law for 10 years, and he shall be appointed during good behaviour.

Every person so appointed shall, before entering on his office, sign the following declaration:—I do hereby solemnly declare that I am a member of the Church of England as by law established. He shall further take the oaths and make the declaration required by the 127th canon of 1604.†

The ancient custom of confirmation of the appointment of the Official Principal by the dean and chapter of the Metropolitan Church shall be retained.

*Assessors.*

By the term "assessor" is to be understood a person who advises the judge, but has no voice in any decision.

*Appeals.*

All appeals shall be by way of rehearing of the matters appealed against.

*Sentences.*

Sentence of suspension, deprivation, deposition from the ministry, or excommunication, shall be pronounced when awarded, by the bishop of the diocese in the Diocesan Court, and by the archbishop in the Provincial Court.

In case of the inability of a bishop to pronounce such sentence he shall appoint one of his comprovincial bishops to act in his place. In the case of mental malady incapacitating him, the nomination shall rest with the archbishop of the province, save in cases where a coadjutor bishop shall have been appointed under the Act of 1869, in which cases the coadjutor shall have the same powers as the bishop.

In case the archbishop shall be unable to pronounce such sentence it shall be pronounced, in the Provincial Court of Canterbury, by the Bishop of London, the Bishop of Winchester, or the senior bishop of the Province of Canterbury, and in the Provincial Court of York by the Bishop of Durham, or the senior bishop of the Province of York. Seniority to be reckoned from the date of consecration.

\* The judges are summoned by order of the House of Lords to attend the hearing of any particular appeal, and arrange among themselves which of them are to come. At the close of the arguments specific questions are proposed to them. Upon these they deliver their opinions in writing, by which, however, the House of Lords is not bound.

† "Before he enter into or execute [his] office he shall take the oath of the King's supremacy in the presence of the bishop, or in the open court, and shall subscribe to the articles of religion agreed upon in the Convocation in the year 1562, and shall also swear that he will, to the uttermost of his understanding, deal uprightly and justly in his office without respect or favour or reward; the said oaths and subscription to be recorded by a registrar then present."—Extract from the 127th canon of 1604.



The sentence of the court shall be recorded in the registry of the diocese, and shall not be published on the church door as at present.

Imprisonment for refusal on the part of a clerk to obey the order of an ecclesiastical court shall be abolished, and refusal to obey an order of court on the part of a clerk shall be punished in the first instance by suspension for a certain term.

*Disobedience to orders of ecclesiastical courts.*

If at the close of the said term of suspension he shall still refuse to obey the original order he shall be liable to a further sentence of suspension; and if at the close of this second sentence of suspension he shall still refuse, he shall then be liable to be suspended until such time as the court shall be satisfied of his obedience, or if he be beneficed and the case shall require it to be deprived by summary process.

If the clerk being beneficed shall disobey the sentence of suspension he shall, after three months' notice, be liable to be deprived of his benefice by summary process.

If any clerk during suspension or inhibition by an ecclesiastical court or after deprivation attempts to perform divine service in a church to which the suspension, inhibition, or deprivation is applicable, he shall be treated as a disturber of public worship. (*See 23 & 24 Vict. c. 32.*)\*

Any offence against the laws ecclesiastical alleged or reported to have been committed in any place by a clerk holding preferment shall be within the cognisance of the bishop of the diocese within which the preferment is situate, or of the diocese in which the offences are alleged to have been committed. In the case of a clerk holding no preferment the offences shall be within the cognisance of the bishop of the diocese in which he resides, or in which the offences are alleged to have been committed.

*Venue.*

Whenever a bishop is patron of any benefice held by an accused clerk, the archbishop of the province shall in all matters act in his place, and whenever an archbishop is such patron, then the senior bishop in the province according to date of consecration, who is not such patron, shall in all matters act in the place of the archbishop.

*Procedure where bishop is patron.*

It shall not be lawful to move for a writ of prohibition to an ecclesiastical court until after the subject matter of the motion shall have been brought before the ecclesiastical court itself.

*Prohibition.*

The Diocesan Court and the Provincial Court shall have power to make binding orders as to costs.

*Costs.*

Payment of costs in the ecclesiastical courts shall be enforceable by an order of the court for sequestration.

The Commission prescribed by the Church Discipline Act, 1840, is unnecessary and its continuance is inexpedient.

*Commissions of inquiry.*

The pleading and procedure in all the courts in contentious cases shall follow as near as may be the practice and procedure of the Supreme Court of Judicature in civil cases.

*Procedure.*

The practice and procedure, whether in contentious or non-contentious cases, shall be defined by rules and orders to be drawn up by order of Her Majesty in Council, by and with the advice of the Lord High Chancellor, the Lord Chief Justice of England, the Official Principal or Officials Principal of the provinces of Canterbury and York, and the Archbishops and Bishops who are members of Her Majesty's Privy Council, or any two of the said persons, one of them being the Lord High Chancellor or the Lord Chief Justice of England. All rules and orders so made shall be laid before each House of Parliament within 40 days after the same are made, if Parliament is then sitting, or if not, within 40 days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said houses within the next subsequent 40 days on which the house shall have sat praying that any such rules or orders may be annulled Her Majesty may thereupon by Order in Council annul the same, and the rules and orders so annulled shall thenceforth become void, without prejudice to any proceedings already taken under the same.

*Rules and Orders.*

Having deemed it advisable to recommend that the practice and procedure in all ecclesiastical courts should be regulated by Order in Council in the manner above indicated, we do not consider it necessary to offer for consideration any regulations in detail upon these matters. But with regard to the place at which sittings should be held, we would suggest that in a diocese it should be fixed by the bishop, and in a province by the archbishop. Appeals to the Crown might be conveniently heard at the Palace of Westminster.

*Place of sitting of courts.*

The process of "duplex querela," whereby a clerk who has been refused institution by the ordinary appeals to the court of the province against such refusal, is

*Duplex querela.*

\* See post, p. 239.



inconvenient, and indeed has become almost obsolete. But inasmuch as there may be cases where the patron, from indifference or other motives, may not care to proceed by *quare impedit*, we think that a clerk who has been presented to a benefice and objected to by the ordinary should have the same right as heretofore to take proceedings himself in the Provincial Court against the ordinary. Whilst, therefore, we should recommend the abolition of the forms of “duplex querela,” we would substitute for them a suit in the Provincial Court commenced by summons or citation, and continued as nearly as may be according to the rules prescribed for other ordinary suits.

*Evidence.* The Diocesan Court and the Provincial Court shall have power to examine witnesses on oath.

We would also suggest that the existing means of procuring the attendance of witnesses and the production of documents should be retained, but that the process of “significavit” and the issue of the writ “de contumace capiendo” should be simplified. Further, we think that powers should be conferred on the ecclesiastical courts to examine witnesses on commission, and to direct interrogatories to be administered.

*Faculties.* It is desirable that in faculty cases a uniform practice be adopted in all diocesan courts.

*Visitation Courts.* We do not recommend that any material alteration should be made in the arrangements and procedure of the Visitation Courts (as they have always been termed) held by the Bishops and Archdeacons with their officers. The right of making presentments at these courts gives to the churchwardens an opportunity of bringing formally before the Ordinary in person many matters which he can settle without taking them for litigation into the Diocesan and Provincial Courts. It is important also that the manner of admitting the churchwardens should be such as to show that they are officers of the Ordinary.

The question, however, of the payment of fees has in many dioceses seriously interfered with the working of the Visitation Courts. The amount of fees payable under the Order in Council made 15th March 1869, pursuant to 30 & 31 Vict. c. 135.,\* has been complained of as excessive, and it has been doubted whether a uniform scale of payment is suitable to the circumstances of all dioceses.

*Repeals.* The Church Discipline Act, 1840 (3 & 4 Vict. c. 86.), the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85.), and other enactments inconsistent with the constitution of the ecclesiastical courts proposed shall be repealed.

*The Channel Islands.* Only the changes proposed as to appeals to the Crown shall be applied to the Channel Islands.

*The Isle of Man.* Only the changes proposed as to appeals to the Crown and as to the provincial courts shall be applied to the Isle of Man.

*CONCLUSION.* All which we humbly submit to Your Majesty.

EDW. CANTUAR.	L.S.	†W. C. LAKE.	L.S.
†W. EBOR.	L.S.	†J. J. STEWART PEROWNE.	L.S.
BATH.	L.S.	BROOKE F. WESTCOTT.	L.S.
†DEVON.	L.S.	WILLIAM STUBBS.	L.S.
†CHICHESTER.	L.S.	†J. PARKER DEANE.	L.S.
†E. H. WINTON.	L.S.	†EDWARD A. FREEMAN.	L.S.
†J. F. OXON.	L.S.	†THOMAS E. ESPIN, D.D.	L.S.
BLACHFORD.	L.S.	ALEX. COLVIN AINSLIE.	L.S.
†COLERIDGE, C.J.	L.S.	ARTHUR CHARLES.	L.S.
†ROBERT J. PHILLIMORE.	L.S.	†F. H. JEUNE.	L.S.
RICHARD ASSHETON CROSS.	L.S.	SAM. WHITBREAD.	L.S.
†WALTER C. JAMES.	L.S.		

A. B. KEMPE, *Secretary.*

† These Commissioners sign subject to the reservation or reservations which bear their signatures.



## RESERVATIONS.

IN signing the Report I am compelled to record my dissent from it in two important particulars.

1. In allowing anyone to lodge a complaint, the Report makes the hearing of the complaint depend absolutely upon the permission of the bishop. Except with this permission the courts will be closed entirely to a layman, who will have no right of appeal from this absolute decision, however great the wrong which he may conceive himself to have sustained.

2. Great evils have resulted from litigation in the past. To prevent the evils for the future, something should be done to afford a means of direction and arbitration without resort to the courts. One such means is supplied by the Prayer Book, in the reference to the authority of the bishop when doubts or divers interpretations prevail. But unless the decisions of the bishop are held to be binding, till they are appealed against, they are of no avail. Let the bishop have power to make an order in all matters affecting the conduct of public worship, which shall be binding until reversed by the Court of Appeal. Let there be an appeal to the Archbishop's Court either from such an order, or from a trial in the Diocesan Court. Once make the bishop's authority a reality, and not an utterance of which no court will take notice, and he would be able to compose many of the disputes which now arise about such subjects without prolonged litigation.

W. EBOR.

WE concur in these reservations.

J. J. STEWART PEROWNE.  
F. H. JEUNE.

I DESIRE to express my concurrence in the second of these reservations, having written separately as to the first.

COLERIDGE, C.J.

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WHILST agreeing generally with the suggestions of the majority of my colleagues, which, in my opinion, would effect a considerable improvement upon the present mode of procedure in the ecclesiastical courts, I feel unable to concur in the following recommendations :—

1. That the bishop should preside in his own court except under certain specified circumstances :—

(a.) I object to this, because it seems to me that upon any charge against a clerk for breach of the law the issue should be tried by the fairest and most competent tribunal that the legislature can provide; and that, with this view, all judges in ecclesiastical courts should be laymen, learned in the law.

(b.) Because also under the recommendations in the report, it seems more than probable that in some dioceses the Court of First Instance will be presided over by the bishop, and in others by the bishop's chancellor, thus creating a very anomalous discrepancy, in the constitution of the court, between one diocese and another.

2. I also object to the continuance of the present mode of procedure, recommended in the report, which requires the consent of the bishop before any proceeding can be instituted in his own court.

3. I concur generally in the suggestions of his Grace the Archbishop of York, appended to the report, for giving something of a legal character to a bishop's order as to the conduct of public worship.

CHICHESTER.

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1. I AM unable to concur in the recommendation that there should be in all cases an appeal from the Provincial Court to the Final Court.

I think that the right to appeal should belong to the defendant only.

DEVON.

2. I DISSENT also from the recommendation that the obligation on the part of the Final Court of Appeal to obtain from the archbishops and bishops answers to specific questions as to the doctrine or view of the Church of England should only exist when one or more of the lay judges present at the appeal should demand it.

I think that this reference should be made in all cases of doctrine or ritual.

DEVON.

WE concur in this reservation.

E. H. WINTON.

J. F. OXON.

W. C. LAKE.

W. C. JAMES.

I AM unable to concur in the recommendation made by my brother Commissioners that the bishop's assent should be made a condition precedent to the taking of proceedings to enforce the law, whether moral or ritual, against a clergyman.

I believe that practically this is a power claimed and exercised by bishops for the first time since the Church Discipline Act. I do not question the great power of a bishop in the Middle Ages; or that in practice he could probably have prevented any proceedings against a clergyman in the church courts which he chose to prevent. But since the Reformation, though the fiction of permission was kept up by the forms of the court, yet it was a fiction only, and the practice was, as declared by the highest authority, Lord Stowell, for the assent to be given as a matter of course if the bishop were made safe as to costs. I am very clearly of opinion that this ought to be so, and that the active interference of the bishops to prevent the law of the land being enforced against those who have deliberately broken it is as indefensible in theory as, I must confess, it seems to me to be fast becoming intolerable in practice.

The right as now claimed and exercised covers everything, moral delinquency of the gravest kind, doctrinal error the most extreme, ritual excess, whereby in spite and defiance of the law a repugnant congregation may be compelled to assist at a ceremonial which they think symbolizes an abject and mischievous superstition. It is obviously no answer in reasoning to say that the right claimed would never be so abused, But besides, this is a right clearly capable of being abused, more likely to be abused in proportion to the strength and earnestness of character of those who claim it; finally, one which, desiring to speak with true respect, I must think in fact has been abused.

The English people have, in my opinion, a right to see that the conditions upon which they have granted or secured great privileges to the maintainers of a particular set of religious opinions are carefully observed, a right which ought not to be limited by the will of a few distinguished men amongst those to whom these very privileges have been granted or secured on these very conditions.

It is true that as the bishops may abuse their right of interference, so the people at large may abuse their right of prosecution. But I think that competent judges with absolute power over costs would very soon restrain and, indeed, altogether put an end to merely frivolous litigation.

There are some other points on which the report does not represent my individual opinion, but they are none of them, except the one as to which I have ventured to express myself above, serious enough to justify me in withholding my signature from a report, the recommendations of which, on the whole, I regard as very valuable, and as likely, if adopted, to bring about a very beneficial change.

COLERIDGE, C.J.



I AM unable to concur in those recommendations of the report which suggest that there should be an appeal to the Crown, in other words, that lay judges should decide causes in the last resort, the practical effect of which would be to enable these lay judges to dictate to the archbishop spiritual sentences which he would have, perhaps, contrary to his own judgment to pronounce.

If, entertaining this opinion, it be my duty to say what would be, if not the best, the least objectionable solution of the difficulties which have always been inherent in this matter, and the fairest adjustment of the present relations of Church and State, I would suggest that there should be no appeal in any spiritual cause beyond the Court of the Archbishop. At the same time, I would give the State the power to insist that there should be one or more trained assessors of legal experience and standing to assist in the administration of justice by that Court.

If there is to be any such appeal it should be, in my judgment, subject to the safeguards and provisions suggested by Lord Devon.

ROBERT PHILLIMORE.

WE desire to express dissent from that recommendation which gives to the bishop absolute power of refusing leave to institute proceedings in cases of ritual and doctrine.

J. PARKER DEANE.  
THOMAS E. ESPIN, D.D.

I WISH to state my dissent from the words which confine the hearing of appeals to the Crown to members of a single profession. I would leave it open to the Crown to appoint lawyers, churchmen, or any other persons who may be thought competent, as was the case with the Court of Delegates under the statute of Henry the Eighth. I hold that the examination of questions of this kind constantly calls for knowledge of a special kind, the presence of which is by no means implied in the professional learning of the lawyer, and which is just as likely to be found in other persons, clerical or lay.

EDWARD A. FREEMAN.

## REPORT OF LORD PENZANCE.

Having been prevented by ill-health from attending a great number of the meetings of Your Majesty's Commissioners, and taking part in their discussions in connexion with the voluminous evidence which they have received, I do not feel competent to give a general assent to their Report, although there are some parts of it with which I entirely agree.

I shall best, I think, discharge the duty imposed upon me under Your Majesty's Commission by embodying some conclusions at which I have arrived in the form of a separate Report.

There are some matters of law and constitutional history to which I think a closer attention should be drawn than appears to have been thought necessary.

Two main propositions have been put forward by those who find fault with the constitution of the existing courts:—

1. That the ecclesiastical courts of this country, as a matter of constitutional history, are courts which derive their authority and jurisdiction from the Church, independent of the Sovereign or the State, and as a corollary from this, that the Legislature is exceeding the proper limits of its authority if it interferes with, or attempts to regulate, them without the consent of the Church, thereby meaning the clergy in Convocation assembled.

2. That the judges who administer the ecclesiastical law ought, according to the ancient and true constitution of these courts, to be either ecclesiastics or persons upon whom a quasi spiritual character has been impressed by the bishops or archbishops whom they represent.

These objections have not been dealt with directly by affirmation or denial in the Report, but as some of the statements and recommendations to be found in the Report



appear to me to give a tacit adhesion to them, at least, in some degree, I will state very shortly why it is that in my opinion they cannot be maintained.

Until the Conquest, whatever ecclesiastical jurisdiction was exercised in this country through the medium of a constituted court, as distinct from the personal power and control of the bishops, was exercised in what were the temporal courts of the country, the bishop sitting there by the side of the temporal judges. This is stated to be the case by, I believe, all historians of repute, including both Lingard and Collier. The existing ecclesiastical courts first existed, and were erected and created, by and under a charter of William the Conqueror. Whether this charter emanated from the Sovereign in Council, or whether it partook of the nature of what was afterwards known as a charter in Parliament, it is needless for my present purpose to inquire. The charter professes, on the face of it, to be made “*communi consilio*” of the archbishops, bishops, and abbots, “*et omnium principum regni mei.*” The date of this charter is, I believe, unknown, but its terms are still extant. “*Mando et Regiâ auctoritate præcipio ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundredto placita teneant nec causam quæ ad regimen animarum pertinet ad iudicium secularium hominum adducant sed quicumque secundum episcopales leges de quâcunque causâ vel culpâ interpellatus fuerit ad locum quem ad hoc episcopus elegerit et nominaverit veniat, ibique de causâ suâ responderet, et non secundum hundredtum sed secundum canones et episcopales leges rectum Deo et episcopo suo faciat.*”

Having thus provided for the holding of separate courts for the administration of the “*episcopales leges*” at places to be nominated by the bishops, the Conqueror went on to give effect and coercive jurisdiction to these courts over his subjects in the following language:—

“*Si vero aliquis per superbium elatus ad justitiam episcopalem venire non voluerit vocetur semel et secundo et tertio; quod si nec sic ad emendationem venerit excommunicetur et si opus fuerit ad hoc vindicandum fortitudo et justitia regis vel vicecomitis adhibeatur.*”

It was under this authority, and from this time, that the bishops first “nominated,” as they were ordered to do, the fixed places where they would hold their courts, and the Archbishop of Canterbury fixed upon the church of St. Mary-le-Bow, where the Court of Arches first sat.

“Before this reformation of justice (says Collier, Vol. 2, p. 44), as the charter calls it, the bishop used to sit with the sheriff in the county court, and with the hundredary in the Hundred Court, if he pleased, where ecclesiastical and civil causes were tried by their joint authorities, but from this constitution of King William’s the separation of both jurisdictions bears date.”

It was the King, therefore, who created, as he says in his charter, “*regia auctoritate,*” a separate set of tribunals for the treatment of questions of ecclesiastical law, and the practical exercise of purely spiritual jurisdiction. It was the Sovereign, and not the Church, who authorised the holding of these separate courts for the administration of ecclesiastical law, which have come down, with many alterations no doubt, but without losing their identity, to modern times, and are the ecclesiastical courts of the present day.

To go no further than this, therefore, it appears to me that what the Sovereign of his own supreme authority, with the advice of his Council or Parliament, set up and created, the Sovereign, with the advice of Parliament, may well alter and amend. But as a matter of fact and of history, the Sovereign, by the advice of Parliament, has never hesitated to do so when thought desirable, and every alteration which has been made in the jurisdiction, the practice, or the constitution of these original ecclesiastical courts as they first existed under the Conqueror’s charter, have been made by the authority of the Sovereign in Parliament, and by that authority alone. The Bill of Citations, as it was called, which is the Statute 23 Hen. 8. c. 9., did very largely interfere with, and restrict, the action and jurisdiction of the Ecclesiastical Court of the Province, when it provided that the archbishop’s court should no longer entertain original suits for breach of ecclesiastical law within the province, except at the request of the bishop of the diocese. Before this Statute was passed the King’s subjects used to be cited from all parts of the province to appear at the Archbishop’s Court in London; and the grievous expense and vexation thereby caused gave rise to the Statute, but a graver or more distinct interference with archbishop’s original jurisdiction could hardly be conceived.

It is needless to call attention in detail to the numerous statutes passed since then, modifying, changing, restricting, and amending the jurisdiction of the Ecclesiastical



Courts, some carrying away from ecclesiastical cognisance entire classes of causes, such as the testamentary and matrimonial causes, others restricting ecclesiastical censures in their application to the laity, such as that which transferred the offence of brawling in church from the category of ecclesiastical, to that of civil offences, and that which put an end to proceedings for defamation; and others again dealing with the practice and procedure of these courts, such as the Church Discipline Act, the Act under which evidence is now taken *viva voce* in open court, the Acts for the imprisonment of contumacious persons, and lastly the Public Worship Regulation Act.

It is not of course intended by these statements to be suggested that the Conqueror set up or created for the first time the exercise of spiritual censure in this country. For there is no doubt that before the Conquest the bishops did exercise authority and control here, as elsewhere in Christendom, over both clergy and laity; but that authority was, as is stated in the Report, p. xvii, "a judicial authority inherent in the person of the bishop rather than in the court, and might be exercised in synod, in visitation, *in camera*, or *in itinere*." The extent, however, to which this spiritual control was exercised by the bishops before the Conquest, and the manner of its exercise, are not (so far as I am aware) susceptible at the present day of any very exact or cogent proof. But the erection of constituted courts with a coercive jurisdiction, to be enforced if need be by the civil power, over the King's subjects was a different matter. It could only be done as the Charter said it was done "*Regia auctoritate*," with the advice of his Parliament, by and under which authority, says Lord Coke, alone all courts of justice have had their existence in this country. 4 Inst. 200.

The older law books are not silent upon this subject. I will only refer to the following passages from the digest of Chief Baron Comyn, tit. Praerogative D 9. "All ecclesiastical jurisdiction began originally by the grant of William I., or rather by Parliament, for before ecclesiastical causes were determined in the Hundred," 2 Rol. p. 216, l. 20. And again, "The jurisdiction of the bishops, &c. began by the King's grant," 2 Rus. 1343. And again, "The ecclesiastical laws, though derived from others, yet being approved and allowed here by general consent, are the King's Ecclesiastical Laws," 5 Co. 9a., Dav. 70 b.

I come therefore to the conclusion that there is no warrant to be found in the legal or constitutional history of this country for the proposition that there have existed at any time since the Conquest, or indeed before it, spiritual courts deriving their original authority from the Church independent of the Sovereign, or the State, and that the authority for the jurisdiction of the existing Ecclesiastical Courts did, on the contrary, emanate directly from the Crown. I do not offer any opinion whether it would or would not be an improvement if the spiritual courts had a more independent existence. I desire only to place on record their actual constitution and origin.

I now pass to the suggestion that the judges of the Ecclesiastical Court ought to be ecclesiastics.

I will presently consider this suggestion in the character of a proposed change from the existing state of things. But if it is intended, as I rather think it is, by those who urge it, to assert that the administration of the ecclesiastical law in the spiritual courts by laymen is in any degree a modern innovation I must record my dissent from such an assertion. The practice of delegating the authority of the archbishops and bishops to laymen learned in the law, under the name of officials or chancellors, is many centuries old, and has been continued almost without intermission down to the present day. I have nothing to add to the statement on this matter to be found in the Report at page xix. It is beyond doubt, however, that the notion that ecclesiastics ought to preside in the spiritual courts is not a new one. In Bishop Gibson's Codex, at p. 984, will be found a reference to the institution of Archbishop Chichely, temp. Hen. V., by which it was provided that no layman should exercise ecclesiastical jurisdiction. The same thing was enjoined by some portion of the canon law, but whether it was received and acted upon in this country before the Reformation to any, and if so, to what extent, it is not easy to say. The matter, however, was finally set at rest by the statute of 37 Hen. 8. c. 17., which declared this restriction to be one of the abuses of Papal power, and expressly provided and declared that laymen might lawfully exercise all manner of ecclesiastical jurisdictions, and "all censures and coercions appertaining to the same." This statute has never been repealed, and has been followed by an almost unbroken practice (I speak of the archbishops' officials) of appointing lawyers to these judicial offices.

But the question remains whether it is desirable that this practice should continue; and a prominent suggestion made in the Report is that it should not, so far at least as



the Diocesan Court is concerned, where the bishop himself, it is recommended, ought to preside. I cannot agree in this recommendation. I will presently state in what way it seems to me that the personal authority of the bishop in the control of his clergy, which dates from the earliest periods of ecclesiastical history, would be best revived and exerted at the present day. To effect this object by providing that he should preside in the Diocesan Court is, I think, objectionable for the following reason. The administration of law, whether civil or ecclesiastical, by a court implies the application to individual cases of strict and constant rules, adhered to continuously, not only in the court itself, but uniformly by all courts of similar jurisdiction throughout the realm. It is thus and thus only that a consistent body of legal decision and settled interpretation of the written rules, regulations, and other written documents in which the law is embodied is gradually built up, accumulated, and maintained, and it is thus and thus only that men come to know what is forbidden and what allowed to them by the law, and are able to guide their conduct accordingly. Speaking generally, where discretion begins the proper administration of the law as such comes to an end.

For the administration of strict law in this sense I do not think that an ecclesiastic is, by his training and acquirements, well qualified. It is, I think, to be apprehended that a bishop would not be careful to follow decided cases, with which, perhaps, he would be little familiar; that he would be apt to import into his enunciation of the law considerations of policy and the elasticity of discretion, while in controversial matters of doctrine there would be room for the apprehension that he might bring to judicial decision opinions already formed, and perhaps strongly held, on one side or the other of the controversy. The probable result would be a startling divergence of decision in the different dioceses, which, by rendering the law uncertain, would bring it into discredit and impair its efficacy.

But while holding these views as to the bishop presiding in the Diocesan Court, I am strongly of opinion that, historically and constitutionally, the primary authority for the correction of excesses in the clergy resides personally in the bishop, and that the exercise of that authority, which was vigorously asserted in times past by the bishops in their visitations, ought to be restored to them.

It is well known that as visitor of his diocese the bishop used to enforce obedience upon his clergy by suspension and even deprivation, though the right to proceed to deprivation without a regular suit and the exhibition of written articles has been questioned. As visitors the bishops acted without set forms or the cumbrous formalities of regular suits. The old legal definition of a visitor's mode of proceeding was as follows:—"Summarie, simpliciter et de plano sine strepitu aut figurâ judicii."

It is this personal power and jurisdiction of the bishop's (with any safeguards that might be thought necessary) which I would revive. Let all complaints of the conduct of the clergy in respect of ritual or doctrine be made to them; let them have power to take evidence on oath, and institute what inquiries they think right and in the way they think right; then let them issue any admonition they think fit to the offender, and if he does not obey, let them pass a sentence of suspension. An appeal from any such sentence might lie to the Provincial Court, and, on the other hand, if the bishop refuse to act, or fails to act with effect, the complainant should be allowed to promote the office of judge against the offender in the Provincial Court, the leave of the judge having been first obtained whose duty it should be to refuse it if he found the complaint to be frivolous, trivial, vexatious, or urged without sincerity. From the Provincial Court an appeal should lie in all cases to the ultimate Court of Appeal.

If it be allowed that the laity have any rights in the due and proper administration of the services and ceremonials of the Church, it seems to me to follow that, if the bishop is unable or unwilling to maintain those rights, any parishioner who is aggrieved by a breach of the law in this respect ought to be permitted to assert them in the spiritual courts, provided always that his complaints, or supposed grievances, are not trivial, or frivolous, or vexatious, and are honestly put forward.

In support of these views I venture to refer to the following passage from the First Report of the Commissioners, dated the 19th of August 1867, under the Commission issued by Your Majesty in the month of June of that year, in reference to the conduct of public worship: "We are of opinion that it is expedient to restrain, in the public services of the United Church of England and Ireland, all variations, in respect of vesture, from that which has long been the established usage of the said United Church, and we think this may be best secured by providing *aggrieved parishioners* with an easy and effectual process for complaint and redress." This report was signed by the whole 29 Commissioners, of whom several were archbishops and bishops



and the rest distinguished lawyers and laymen most conversant with the subject, and presents a strong body of opinion in favour of the proposition, that (in the last resort, at least,) means should be secured to the laity of enforcing the law in respect of vestments, and by parity of reasoning in respect of other departures from the Ceremonial Rubrics.

In making the above suggestions for the intervention of the bishops before a resort to the courts of law, I regard the position of the bishops in these matters rather as that of superior officers entitled to control and direct the clergy by their commands than as merely judges correcting them by censures of law. It is a strong confirmation of this view of their position that mere disobedience to the Ordinary without more is a distinct ecclesiastical offence, warranting ecclesiastical censure in the ecclesiastical courts, while "incurable disobedience to the Ordinary" is declared, over and over again in the law books, to be properly punished by deprivation. It is also to be borne in mind that every ordained priest has at his ordination taken a solemn oath to obey his bishop. Great good would, I think, ensue from thus conferring on the bishops a large personal jurisdiction and discretion in composing disputes, restraining excesses, and settling the differences between a clergyman and his parishioners without an appeal to the law, which should only be invoked where the bishop has failed. In a word, I would only appeal to the law and the courts of law in the last resort. If an appeal to a court of law could be avoided it would be no longer necessary to send solicitors' clerks to attend divine service in order to obtain definite and legal evidence of the way in which the service is conducted.

*Court of Appeal.*—I will only remark upon the recommendation in this part of the report that in future "The actual decree should be alone of binding authority, the "reasoning of the written or oral judgments should always be allowed to be reconsidered and disputed."

If this only means that what are known among lawyers as "obiter dicta" are not to be held binding on future cases, I have nothing to say to it; these judicial utterances never, so far as I am aware, have been treated as anything but the expressed opinion of the individual judge upon points or matters not directly in question, and which did not arise for judgment in the particular case. But the language of the recommendation goes much further. It appears to me to propose that in future, in place of asking upon what principle was this or that case decided, the only question should be—did the court decide (in reference to the ascertained facts) for the promoter, or for the defendant, for that is all which the actual decree will show. Such a system, if adopted, would result in this, that no case would become a precedent for the decision of cases arising after it, except those in which every circumstance was identical. No legal principle would be asserted or established, no general interpretation of the terms and directions involved in the Rubrics of the Prayer Book, or of the language in which the doctrine or the ceremonial of the Church has been expressed by lawful authority could be arrived at or ascertained. Every fresh point, though in reality falling under a general category with which the court had previously dealt, would become necessarily the subject of a fresh suit to settle it, and until it was brought to adjudication no man would be able to tell what the law might be held to be. In a word, such a system, if acted upon for half a century, would destroy the ascertained law altogether; and had it been maintained in the temporal courts from early times, it is not too much to say that what is known as the common law of the land could have had no existence.

All which matters I beg humbly to report and submit to Your Majesty.

PENZANCE. L.S.



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## MINUTES OF PROCEEDINGS.

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IN accordance with the directions of the Commissioners, Minutes of formal matters are omitted and those of unimportant ones are abbreviated.

The Chair, except where the contrary is expressly stated, was taken by the Archbishop of Canterbury, as President of the Commission.

The meetings, with the exception of the first, were held at the Office of the Commission, Palace Chambers, Bridge Street, Westminster, began usually at 3.30 p.m., and lasted about two hours and a half.

The Attendance List will be found at the end of the Minutes, p. 19.

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### FIRST MEETING.

MONDAY, MAY 30TH, 1881.

The first meeting of the Royal Commission, appointed May 16th, 1881, was held on Monday, May 30th, 1881, at 4.30 p.m., in the Jerusalem Chamber, by permission of the Dean of Westminster.

The ARCHBISHOP OF CANTERBURY, as the Commissioner first named in the Commission, took the chair.

The Secretary read the Royal Commission.

On the motion of the EARL OF DEVON, seconded by SIR R. A. CROSS, the ARCHBISHOP OF CANTERBURY was unanimously elected President of the Commission.

The PRESIDENT stated that letters had been received from the Archbishop of York and the Earl of Chester, apologising for their inability to attend, and from the Rev. T. S. Holmes, announcing that Mr. E. A. Freeman was absent from England.

It was moved by the EARL OF DEVON, and seconded by SIR R. PHILLIMORE—

That witnesses be called to give evidence as to the various points to be considered by the Commission.

*Carried.*

The Secretary was directed to procure and place in the hands of each Commissioner copies of—

- (1) those Statutes which are the subject of consideration by the Commission, the selection of such statutes being made by him in conference with Mr. F. H. Jeune;
- (2) the Return of all appeals to the Court of Delegates, known as Mr. Rothery's Return;
- (3) the "Special and General Reports of the Commissioners appointed to inquire into the Practice and Jurisdiction of the Ecclesiastical Courts of England and Wales, 1831-2," having them, if necessary, reprinted without the appendices.

The Secretary was instructed to summon Cyrus Waddilove, Esq., the Registrar of the Court of Arches, to give evidence as to the procedure in a suit sent by Letters of Request to the Court of Arches.

It was resolved that members of the Commission should be asked to give evidence.

MR. JEUNE moved for a return of all the Commissions of Inquiry which had sat under the 3rd and 4th Victoria, c. 86, 1840. The consideration of the matter was postponed.

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### SECOND MEETING.

THURSDAY, JUNE 16TH, 1881.

The Secretary read a letter from Mr. E. A. Freeman, stating that he had informed the Prime Minister previously to his appointment as a Commissioner that he would be obliged to be frequently absent from the meetings of the Commission.

The Secretary presented a series of Resolutions drawn up and sent to the Commission by the Chapter of the Deanery of Graffoe, relating to the matters under con-

sideration by the Commissioners; it was ordered to be laid on the table.

The Secretary presented a letter from the Chancellor of Carlisle, enclosing a copy of a proposed Bill entitled "An Act for Clergy Discipline;" it was ordered to be laid on the table.

It was ordered that the names of the witnesses examined by the Commission should not be published in the newspapers.

The Secretary reported that owing to illness Mr. C. Waddilove would be unable to attend and give evidence at present; and that he had, under the directions of the President, summoned W. P. Moore, Esq.

It was ordered that Mr. Waddilove should be summoned again when he was well enough to attend.

The Secretary was directed to summon J. B. Lee, Esq., to attend and give evidence at the next meeting.

It was resolved that the examination of witnesses should be commenced by the Chairman and then carried on by some Commissioner requested by him to do so, and that subsequently questions might be asked by the other Commissioners in order.

W. P. MOORE, Esq., was called in and examined.

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### THIRD MEETING.

FRIDAY, JUNE 17TH, 1881.

SIR R. PHILLIMORE read a statement as to the enforcement of obedience to orders of Ecclesiastical Courts under the 53rd Geo. III., c. 127. It was ordered to be added as an appendix to the evidence of Mr. W. P. Moore.

On the motion of CANON STUBBS certain suggestions offered by him for the use of the Commission as to the historical questions involved in their inquiry and the method of treatment were ordered to be printed and circulated among the Commissioners.

On the motion of CANON WESTCOTT certain questions suggested by him to be addressed to persons capable of giving information as to the ecclesiastical procedure in churches in communion with the Church of England and other, were ordered to be printed and circulated among the Commissioners with a view to the consideration of the advisability of issuing them.

On the motion of the ARCHBISHOP OF YORK it was resolved that witnesses should at once be called representing those persons who objected to the present constitution of and mode of procedure in the Ecclesiastical Courts.

It was also resolved on the motion of the ARCHBISHOP OF YORK that the Honourable C. L. Wood, President of the English Church Union, should be summoned to give evidence at the next meeting.

J. B. LEE, Esq., was then called in and examined.

At the conclusion of Mr. Lee's examination the REV CHANCELLOR ESPIN was examined.

It was then resolved that Dr. W. G. F. Phillimore should be summoned to give evidence next week.

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## FOURTH MEETING.

THURSDAY, JUNE 23RD, 1881.

The Secretary read a letter from the Council of the Church of England Working Men's Association asking whether any facilities could be given to a representative of their body to watch the proceedings of the Commission.

The Secretary was directed to reply that the proceedings of the Commission were private and that consequently no such facilities could be given.

The Secretary presented a memorial he had received as to witchcraft alleged to be practised by certain officers of the Ecclesiastical Courts; he was directed to take such steps in the matter as he thought right.

It was resolved that the following persons should be called as witnesses:—

The Dean of St. Paul's.  
The Rev. W. Milton.  
The Rev. John Oakley.  
The Rev. G. H. Wilkinson.  
L. R. Valpy, Esq.

The Secretary stated that a letter had been put into his hands from the Rev. R. W. Kennion asking to be called as a witness. The matter was ordered to stand over for future consideration.

SIR R. PHILLIMORE made a statement as to the statute 37 Henry VIII., cap. 17, which was alluded to in the evidence of the Rev. Chancellor Espin.

The Hon. C. L. Wood was then called in and examined.

## FIFTH MEETING.

FRIDAY, JUNE 24TH, 1881.

It was resolved that the Rev. Canon Bright, Regius Professor of Ecclesiastical History in the University of Oxford, and H. R. Droop, Esq., Barrister-at-Law, should be called as witnesses.

The question whether the Rev. Canon Liddon and the Rev. George Body should also be called was left for future consideration.

The Secretary was instructed to summon the Rev. W. Milton and the Rev. J. Oakley to give evidence on Thursday, June 30th, and the Rev. Canon Wilkinson and L. R. Valpy, Esq., to give evidence on Friday, July 1st.

A letter was read from Dr. Phillimore saying that he was unfortunately detained and would not be able to attend until 4.30.

CANON STUBBS, having consented under the circumstances to give evidence at once, he was examined.

At the conclusion of Canon Stubbs' evidence Dr. W. PHILLIMORE was called in and examined, and his examination not having been concluded when the meeting rose it was adjourned to Friday, July 1st.

## SIXTH MEETING.

THURSDAY, JUNE 30TH, 1881.

The Secretary presented a letter received by him from the Rev. C. H. Davis; it was ordered to be laid on the table.

The Secretary reported that two of the witnesses whom he had been directed to summon for that day and the following, viz., the Rev. John Oakley and Mr. Droop, would not be prepared to attend before the following week, and that it was uncertain when Mr. Valpy would be able to attend, and that he had consequently under the directions of the President summoned G. H. Blakesley, Esq., Barrister-at-Law.

The Secretary read a portion of a letter from the Rev. John Oakley as to the evidence he was prepared to give.

The following names were added to the list of witnesses:—

The Rev. W. H. Fremantle.  
The Rev. Canon Liddon.  
The Rev. Geo. Body.  
Dr. Tristram.  
Sir Percival Heywood, Bart.  
The Rev. E. S. Ffoulkes,  
and The Chairman of the Church Association.

The Secretary was instructed to summon Mr. H. R. Droop, and the Hon. and Rev. W. H. Fremantle for Thursday, July 7th, and the Rev. John Oakley and one other witness for July 8th.

SIR ROBERT PHILLIMORE made a statement as to the Court of Audience.

The Rev. W. MILTON and G. H. BLAKESLEY, Esq., were called and examined.

MR. F. H. JEUNE made a statement as to the suit of Martin v. Mackonochie.

## SEVENTH MEETING.

FRIDAY, JULY 1ST, 1881.

The Secretary stated that in his interviews with gentlemen whom it was proposed to call as witnesses he had been asked whether they could see the evidence which had already been given. He desired directions as to the course he was to pursue under such circumstances. He was directed to state that the usual practice of not disclosing any previous evidence must be adhered to.

On the motion of the PRESIDENT, the name of the Rev. Canon Jenkins was added to the list of witnesses.

CANON STUBBS asked to be allowed to print the results of an inquiry which he proposed to undertake as to—

- (1) whether appeals against sentences for heresy ever came before the Court of Arches;
- (2) or before Convocation;
- (3) or were taken to Rome;
- (4) or whether there was any appeal on the subject at all;
- (5) other points of an historical nature.

*Leave was given.*

The Rev. CANON WILKINSON was examined, and the examination of Dr. W. PHILLIMORE was concluded.

## EIGHTH MEETING.

THURSDAY, JULY 7TH, 1881.

The ARCHBISHOP OF YORK asked leave to bring forward the following resolution on Thursday the 14th inst. :—

That the attention of the Commission might be directed to the question, How far the present mode of proceeding against clerks for deviations from ritual order, which is felt to resemble the procedure for criminal offences, could be superseded by a power of direction given to the bishop in all cases of ritual, which should be binding on the clergy, and from which there should be no appeal except on matters of law.

*Leave was given.*

The BISHOP OF WINCHESTER moved that copies should be printed and circulated among the Commissioners of the Public Worship Regulation Act in all its stages in the House of Lords, viz. :—

- (1.) As originally brought in.
- (2.) As amended on report.
- (3.) As amended by the Commons.
- (4.) As passed.

*The motion was agreed to.*

LORD PENZANCE moved that a memorandum drawn up by the Hon. C. L. Wood and sent to his Lordship should be appended to Mr. Wood's evidence.

*The motion was agreed to.*

On the motion of SIR WALTER JAMES it was ordered that the Bill brought in by the Bishop of London in 1850 to amend the law with reference to the administration of justice in her Majesty's Privy Council on appeal from the ecclesiastical courts should be printed and circulated among the Commissioners.

The Secretary reported that the Rev. Canon Jenkins, the Rev. G. Body, and Dr. Tristram would give evidence; that he had received a letter from the Secretary of the Church Association to the effect that a member of the Council of the Association would give evidence in place of the chairman, as at present there was none.

On the motion of the EARL OF DEVON the names of the Rev. W. E. Heygate and J. Shelly, Esq., were added to the list of witnesses.

The Secretary stated that Sir Robert Phillimore, who was not present, was anxious to have the name of the



Rev. Berdmore Compton added to the list. It was ordered to be added.

The Secretary presented a letter from the Hitchin branch of the English Church Union. It was ordered to be laid on the table.

The REV. AND HON. W. H. FREMANTLE was called in and examined. H. R. DROOP, Esq., was also called in and examined. The examination of the latter not having been concluded was adjourned to Wednesday, July 13th.

#### NINTH MEETING.

FRIDAY, JULY 8TH, 1881.

The REV. E. S. FFOLKES and the REV. JOHN OAKLEY were called in and examined. During the examination of Mr. Oakley the Archbishop of Canterbury vacated the chair, which was taken by the Bishop of Winchester.

#### TENTH MEETING.

WEDNESDAY, JULY 13TH, 1881.

The Secretary reported that he had received a letter from Sir T. Percival Heywood regretting that his knowledge of the matters under consideration was not such as would justify his giving evidence; that he had received a letter from J. Shelly, Esq., undertaking to give evidence; and that he had had an interview with the Secretary of the Church Association, who stated that the council desired that their body should be represented by C. H. Lovell, Esq.; that that gentleman was now ill, but would, it was hoped, be able to attend and give evidence after the recess.

The Secretary also reported that he had received a letter from the Rev. Edward Miller, offering to give evidence before the Commission. The consideration of the matter was ordered to stand over for the present.

The following names were ordered to be added to the list of witnesses:—

The Rev. J. Wayland Joyce.  
The Rev. E. P. Hathaway.  
The Hon. Wilbraham Egerton, M.P.  
The Right Hon. J. G. Hubbard, M.P.  
J. Girdlestone, Esq.

SIR WALTER JAMES gave notice that an early meeting after the recess he would move—

“That the effect of the jurisdiction of the ecclesiastical courts upon the privileges and discipline of the laity be considered by the Commissioners.”

The examination of H. R. DROOP, Esq., was continued and concluded.

The REV. BERDMORE COMPTON was then called in and examined. During his examination the Archbishop of Canterbury vacated the chair, which was taken by the Bishop of Winchester.

#### ELEVENTH MEETING.

THURSDAY, JULY 14TH, 1881.

The ARCHBISHOP OF YORK moved—

That the attention of the Commission might be directed to the question, How far the present mode of proceeding against clerks for deviations from ritual order, which is felt to resemble the procedure for criminal offences, could be superseded by a power of direction given to the bishops in all cases of ritual, which should be binding on the clergy, and from which there should be no appeal except on matters of law.

After a brief discussion it was resolved that the question should be considered by the Commission.

CANON WESTCOTT moved that certain questions as to the ecclesiastical procedure in churches in communion with the Church of England and other, which questions had been circulated among the Commissioners should be addressed to persons capable of giving information on the subject.

The motion was seconded by the ARCHBISHOP OF YORK and agreed to *nem con.*

CANON STUBBS read a paper amplifying, and explaining the suggestions offered by him for the use of the Commission as to the historical questions involved in the inquiry and the method of treatment, which suggestions had been printed and circulated among the Commissioners; and gave notice that he would move for certain returns therein alluded to.

The REV. CANON JENKINS was then called in and examined. During his examination the Archbishop of Canterbury vacated the chair, which was taken by the Bishop of Winchester.

The Secretary read a letter from the Rev. F. G. Lee accompanying 25 copies of the second edition of a letter by him on the Public Worship Regulation Act which he desired to be circulated among the Commissioners.

#### TWELFTH MEETING.

THURSDAY, JULY 21ST, 1881.

The Secretary laid on the table two pamphlets from the Rev. E. S. Ffolkes; one entitled the *Crown and the Mitre, or Church Courts in England*, and the other *Consecration not Transubstantiation*.

The Secretary read a letter from Dr. W. G. F. Phillimore accompanying copies of a letter addressed to the President by him as to the jurisdiction of ecclesiastical courts with regard to the discipline of the laity, as to which he had desired to make some observations during his examination but had no opportunity of doing so. The matter was ordered to stand over for future consideration.

The Secretary read a letter from Mr. W. P. Moore as to the costs in *Martin v. Mackonochie*.

The Secretary reported that he had communicated with the various persons whose names had been added to the list of witnesses at the last group of meetings, and that—

J. Shelly, Esq.,  
The Right Hon. J. G. Hubbard, M.P.,  
The Hon. W. Egerton,  
and J. Girdlestone, Esq.,

would give evidence before the recess, and that—

The Rev. D. P. Hathaway,  
and L. R. Valpy, Esq., would give evidence after

the recess, and that the Rev. J. W. Joyce would in consequence of ill health be unable to attend and be examined but would be glad to answer any questions addressed to him by letter.

The following names were ordered to be added to the list of witnesses.

The Rev. E. Miller.  
The Rev. Sir Emilius Bayley, Bart.  
The Rev. Joseph Bardsley,  
Hugh Birley, Esq., M.P.  
Sydney Gedge, Esq.  
R. Seeley, Esq.  
R. C. Christie, Esq.  
J. Martin, Esq.

The EARL OF DEVON proposed that J. Oakes, Esq., churchwarden of Miles Platting should be called as a witness. The matter was ordered to stand over for future consideration.

The REV. CHANCELLOR ESPIN moved that certain suggestions and memoranda which he had drawn up as to the inferior ecclesiastical courts should be printed and circulated among the Commissioners. The motion was agreed to.

The ARCHBISHOP OF CANTERBURY called attention to CANON WESTCOTT's questions as to the Ecclesiastical Procedure in churches in communion with the Church of England and other, and offered to communicate with the Foreign Office with a view to obtaining, if possible, official replies to the questions in the case of foreign churches.

HIS Grace's offer was accepted.

J. SHELLY, Esq., and DR. TRISTRAM were called in and examined.



## THIRTEENTH MEETING.

FRIDAY, JULY 22ND, 1881.

CANON STUBBS presented the following list of memoranda and reports, and moved that they be collected as materials necessary to elucidate the constitution and working of the ecclesiastical courts as created, modified, or otherwise recognised under the Reformation Statutes of the 24th and 25th years of King Henry VIII. and subsequent statutes, offering himself to make the return.

(1.) A copy of the several formal Acts by which the clergy recognised the royal supremacy, and authoritative definitions of the same, illustrating the nature of the powers claimed under this title as distinguished from the ancient prerogative in matters ecclesiastical.

(2.) A calendar of authenticated trials for heresy in England up to the year 1533, stating, in tabular form, the names of the accused, the date of the trial, the process by which it was initiated, the tribunal before which it was tried, the form of the sentence, and any further points that illustrate the nature of jurisdiction in such cases.

(3.) A brief memorandum on the process of appeals to Rome, or any other appeals from the jurisdiction of the Metropolitans,

(a.) From the Conquest to the Constitutions of Clarendon.

(b.) From the abjuration of the Constitutions to the Statute of Præmunire.

(c.) From the passing of the Statute of Præmunire to the passing of the Statute of Appeals.

(4.) A collation of the Journals of the Lords with the records of Convocation from 1529 to 1547, showing the dates and the processes by which the Convocations and the Parliament co-operated in ecclesiastical legislation and business, with such further information on this point as may be obtained from the State Papers.

(5.) A memorandum as to the origin and subdivision of the diocesan and inferior ecclesiastical jurisdictions.

(6.) A list of the reports of ecclesiastical causes, or of cases in which ecclesiastical matters were treated or ecclesiastical points decided in the Courts of Common Law and Equity since the Reformation, with clear references to the books containing the reports.

(7.) A memorandum drawn up from the Journals of the Lords and Commons, showing the occasions on which the Convocations are formally referred to on other than cases of subsidies.

(8.) A memorandum on the materials for a history of the High Commission.

*Resolved*, That the said memoranda and reports be collected, and the Secretary do, if necessary, employ the powers of the Commission as to calling for, having access to, and examining official books, documents, and records, for that purpose.

The HON. WILBRAHAM EGERTON, M.P., and the RIGHT HON. J. G. HUBBARD, M.P., were called in and examined.

The names of—

The Rev. W. Cadman  
and Master Brooke

were ordered to be added to the list of witnesses.

## FOURTEENTH MEETING.

THURSDAY, JULY 28TH, 1881.

On the motion of the EARL OF CHICHESTER the name of The Right Hon. E. P. Bouverie was ordered to be added to the list of witnesses.

The Secretary read a letter from J. Inskip, Esq., asking to be allowed to give evidence before the Commission, the matter was ordered to stand over until the next meeting.

The Secretary laid on the table a letter from the Rev. Dr. Ace.

The REV. G. BODY and SYDNEY GEDDIE, Esq., were then called in and examined.

## FIFTEENTH MEETING.

FRIDAY, JULY 29TH, 1881.

The following names were ordered to be added to the list of witnesses—

J. Inskip, Esq.

J. T. Tomlinson, Esq.

Archdeacon Harrison.

Dr. Littledale.

The Prolocutors of the two Lower Houses  
of Convocation.

Rev. J. Llewellyn Davies.

The REV. SIR EMILIUS BAYLEY and the REV. W. CADMAN were called in and examined. At the conclusion of Mr. Cadman's examination J. GIRDLESTONE, Esq., was called in and examined, and his examination not being concluded at the end of the meeting was adjourned until after the recess.

## SIXTEENTH MEETING.

THURSDAY, NOVEMBER 3RD, 1881.

The Secretary presented memorials from the rural deaneries of Oswestry and Llivon, and the Lichfield Diocesan Church Conference.

The Secretary reported that answers to the questions drawn up by Canon Westcott and circulated among foreign and other churches had been received from the Rev. Canon Jellett on behalf of the Irish Church and from the Archdeacon of Toronto as to various dioceses of Canada and as to New Zealand.

The Secretary was directed to convey the thanks of the Commissioners to those gentlemen.

The Secretary reported that he had communicated with the various witnesses on the list, that

Canon Liddon,

J. Martin, Esq.,

and J. T. Tomlinson, Esq.,

would be unable to attend, that it was doubtful when the

Rev. E. P. Hathaway,

C. H. Lovell, Esq.,

and C. Waddilove, Esq.,

would be able to attend, as they were in ill health; that Master Brooke

was dead, and that the other witnesses would be in attendance.

On the motion of the ARCHBISHOP OF YORK the names of the

Rev. E. P. Hathaway,

H. Birley, Esq., M.P.,

C. H. Lovell, Esq.,

and C. Waddilove, Esq.,

were removed from the list of witnesses, and the names of

Lord Derwent,

Sir E. Beckett,

and Archdeacon Hamilton

were added.

On the motion of CANON STUBBS the names of

The Right Hon. A. J. B. Beresford Hope, M.P.,

and F. H. Dickinson, Esq.,

were added to the list.

On the motion of CANON WESCOTT the name of

L. T. Dibdin, Esq.,

was added to the list.

The Secretary was directed to convey the thanks of the Commissioners to Mr. Dibdin for his courtesy in furnishing them with copies of his pamphlet on "Church Courts."

SIR WALTER JAMES called attention to the motion of which he had given notice as to the discipline of the laity, and referring to the letter which had been addressed by Dr. Phillimore to the Commissioners, on this subject, asked when it would be convenient to consider the matter. The question was postponed in order that the Commissioners might have a further opportunity of considering Dr. Phillimore's letter.

The returns made by Canon Stubbs in accordance with his motion of July 22nd were ordered to be printed.



J. GIRDLESTONE, Esq., was then called in and his examination was proceeded with and concluded.

In the course of Mr. Girdlestone's examination the Archbishop of Canterbury vacated the chair, which was taken by the Archbishop of York.

#### SEVENTEENTH MEETING.

FRIDAY, NOVEMBER 5TH, 1881.

The Secretary reported that he had received answers to the questions circulated by the Commissioners from the Rev. Sir H. W. Moncrieff as to the Free Kirk of Scotland. He was directed to convey the thanks of the Commissioners to the Rev. Sir H. W. Moncrieff.

The DEAN OF WORCESTER, the DEAN OF MANCHESTER, and the REV. W. E. HBYGATE were called in and examined. In the course of the examination the Archbishop of Canterbury vacated the chair, which was taken by the Archbishop of York.

#### EIGHTEENTH MEETING.

THURSDAY, NOVEMBER 24TH, 1881.

Two letters from the Rev. C. H. Davis were ordered to be laid on the table.

The Secretary reported that he had received favourable replies from all the witnesses he had been instructed to summon, with the exception of Lord Derwent, who was afraid he would be prevented from attending by absence from England.

The REV. CHANCELLOR ESPIN moved that some further steps be taken to secure if possible the attendance of Canon Liddon as a witness. After some discussion Canon Stubbs was requested to communicate with Canon Liddon on the subject.

On the motion of the REV. CHANCELLOR ESPIN the name of

The Right Hon. Montague Bernard was ordered to be added to the list of witnesses.

The examination of  
J. INSKIP, Esq.,  
REV. J. LLEWELYN DAVIES,  
and REV. DR. LITTLEDALE  
was then commenced and concluded.

#### NINETEENTH DAY.

FRIDAY, NOVEMBER 25TH, 1881.

The Secretary announced that the Rev. J. Wayland Joyce had sent to him 26 copies of the new edition of his work "The Sword and the Keys" for presentation to the members of the Commission. He was directed to convey the thanks of the Commissioners to Mr. Joyce.

The Secretary read a letter from the Rev. Dr. Littledale containing some remarks intending to supplement the evidence given by him on the preceding day. It was ordered to be added to his evidence.

The Secretary read a letter from H. W. Saunders, Esq., churchwarden of St. James, Hatcham, offering to give evidence before the Commission. He was instructed to decline the offer.

The ARCHBISHOP OF YORK moved—

That at the first meeting in 1882 it is desirable to discuss the future course of the Commission, and that as a basis for such discussion it would be desirable that some members of the Commission should draw up proposals as to the possible constitution of the ecclesiastical courts in the future, not for immediate adoption, but to guide the future proceedings.

After some discussion the motion was carried *nem. con.*, it being understood that the propositions were not to be considered as pledging the proposers to adhere to the views enunciated.

The following Commissioners at the request of the President undertook to make such propositions—

The Archbishop of York,  
Lord Coleridge,  
Canon Stubbs,  
Canon Westcott,  
and Mr. A. Charles.

On the motion of LORD COLERIDGE the name of the Rev. A. H. Mackonochie was ordered to be added to the list of witnesses.

SIR WALTER JAMES moved—

That it is desirable that the ambiguities of law, touching the rights, privileges, and duties of the laity, arising from the abridgments of power in the Courts Spiritual in consequence of the Report of the Commission of 1832, should, if possible, be cleared up by the action of this Commission.

After a short discussion the consideration of the motion was ordered to stand over.

The REV. CHANCELLOR ESPIN moved—

That this Commission do direct its attention to the state of the law relating to the election, admission, and responsibilities of churchwardens; pews and sittings in churches; sequestrations; and subordinate matters dealt with in the Report of the Commissioners in 1832.

*Carried.*

The examination of

L. R. VALPY, Esq.,  
was then commenced and adjourned to a later date.

The examination of

The RIGHT HON. E. P. BOUVERIE  
was then commenced and concluded.

#### TWENTIETH MEETING.

TUESDAY, DECEMBER 20TH, 1881.

On the motion of the BISHOP OF WINCHESTER, seconded by SIR R. A. CROSS, the Chair was taken by LORD COLERIDGE—

The Secretary read a letter he had just received from the ARCHBISHOP OF CANTERBURY stating that he would be prevented by indisposition from attending; that he wished to propose the name of

The Rev. G. Sarson as a witness; that he desired that a letter he enclosed should be read, and the request therein contained be if possible acceded to, and that he wished to make certain propositions under the Archbishop of York's motion of November 25, which propositions he enclosed.

The Secretary read the letter referred to by his Grace, which was from James Oakes, Esq., churchwarden of St. John the Evangelist, Miles Platting, desiring that he, his fellow churchwarden, and a leading member of the congregation of St. Johns might be examined by the Commissioners as to the mode in which prosecutions under the Public Worship Regulation Act, are brought about and carried on. The Secretary also read his Grace's reply to the effect that he would urge the propriety of acceding to the request.

The Secretary read the propositions referred to by the Archbishop, and also one made by the Bishop of Oxford. They were ordered to be printed and circulated.

The Secretary read a letter from the Secretary of the Cathedral Establishments Commission as to the enforcement of residence by deans and canons; the matter was ordered to stand over until the Archbishop of Canterbury could attend.

The Secretary read a letter from the Lieut.-Governor of the Isle of Man, forwarded through the Home Office, asking that evidence might be taken as to the ecclesiastical courts in the Isle of Man, and suggesting that Sir J. Gell, the Attorney-General of the Island, would be a suitable person to give evidence. He was instructed to communicate with the Lieut.-Governor, and to say that the Commissioners would be ready to take the evidence suggested.

The Secretary was directed to thank the Hon. C. L. Wood for a present of 25 copies of a pamphlet by Canon Liddon on the subject of the ecclesiastical courts.

The Secretary reported that the Rev. A. H. Mackonochie would attend and give evidence, and that he had received a letter from

The Right Hon. Montague Bernard stating that he did not consider that he could give any useful information to Commissioners.

The following names were ordered to be added to the list of witnesses—

J. Oakes, Esq., and two others from Miles Platting.  
The Rev. Malcolm McColl.  
The Rev. G. Sarson,  
The Editor of the "Spectator."



CANON STUBBS stated that he had, as desired, spoken to Canon Liddon, and that gentleman was now willing to attend and give evidence.

On the motion of the EARL OF DEVON the Secretary was directed to summon witnesses for the first and subsequent meetings in 1882.

CANON STUBBS obtained leave to have a note explanatory of his recently issued return printed and circulated.

THE REV. E. MILLER,  
R. SEELEY, Esq.,  
and ARCHDEACON HARRISON were then examined.

#### TWENTY-FIRST MEETING.

WEDNESDAY, DECEMBER 20TH, 1881.

The Secretary read a letter from Canon Liddon consenting to give evidence before the Commission.

The BISHOP OF TRURO called attention to an account of the expenses actually paid or incurred in connexion with the principal recent prosecutions on account of ritual by the English Church Union. It was ordered to be printed.

The Secretary reported that answers to Canon Westcott's questions had been received from Cape Town and the United States of America. He was directed to thank the gentlemen who had furnished the answers.

The Secretary was instructed not to summon witnesses for the first meeting of 1882, as that day would be occupied with the consideration of the propositions sent in under the Archbishop of York's motion.

CANON BRIGHT,  
SIR E. BECKETT, Q.C.,  
and THE REV. J. BARDSLEY,  
were then called in and examined.

#### TWENTY-SECOND MEETING.

THURSDAY, FEBRUARY 23RD, 1882.

The Secretary reported that answers to the questions issued by the Commission as to the ecclesiastical procedure in churches in communion with the Church of England and other had been received from—

The Episcopal Church of Scotland,  
The Diocese of Adelaide,  
Melbourne,  
New Zealand,  
and (through the Foreign Office)  
France,  
Belgium,  
Prussia,  
Austria,  
Russia,  
and Sweden.

He was directed to thank the gentlemen who had furnished the answers.

The Secretary laid on the table a copy of a pamphlet on the ecclesiastical courts, presented by the author, the Rev. Canon Trevor, D.D. He was directed to thank Canon Trevor.

The Secretary presented a memorial he had received from the Church of England's Laymen's Defence Association, through J. T. Tomlinson, Esq., the Secretary of the Association, and asked for the directions of the Commissioners as to whether the memorial should be printed and added to the appendices to the Report in accordance with the wish of the memorialists. He was directed not to have the memorial printed.

The Secretary read the letter from the Cathedral Establishments Commissioners, the consideration of which was ordered at a meeting of this Commission, on Tuesday, December 20th, 1881, to stand over until the Archbishop could attend. It was now ordered that the matter should stand over for future consideration.

The Secretary reported that all the witnesses summoned would attend, with the exception of Archdeacon Hamilton and R. W. Hutton, Esq. (the Editor of the "Spectator"), from whom letters were read, apologising for their inability to attend.

The Secretary reported that he had received letters from

E. Hereford, Esq.,  
and Rev. T. W. Mossman,

in which those gentlemen offered to give evidence before the Commissioners. The letters were considered.

The names of Henry Reeve, Esq., C.B., and the Rev. Canon Trevor, D.D., were ordered to be added to the list of witnesses.

The Commissioners then discussed the propositions issued by—

The Archbishop of Canterbury,  
York,  
Earl of Devon,  
Chichester,  
The Bishop of Oxford,  
The Lord Coleridge,  
Canon Westcott,  
Canon Stubbs,  
Dr. Deane,  
The Rev. Chancellor Espin,  
Mr. A. Charles,  
and Mr. F. H. Jeune,

in accordance with the motion of the Archbishop of York of November 25th.

In the course of the discussion, the question being raised as to whether a preliminary report as to the historical matters considered by the Commission should be issued, it was resolved to postpone the consideration of the question until the materials for such a report had been collected by Canon Stubbs, who had undertaken the collection.

#### TWENTY-THIRD MEETING.

FRIDAY, FEBRUARY 24TH, 1882.

The Secretary was directed to communicate with the Foreign Office for the purpose of obtaining fuller information as to the position of the Roman Catholic Church in Belgium than had been supplied in the answers furnished to the Commission.

J. OAKES, Esq.,  
W. BLAKEMAN, Esq.,  
and E. HAYWARD, Esq.,  
were then examined.

#### TWENTY-FOURTH MEETING.

THURSDAY, MARCH 2ND, 1882.

The Secretary read a memorial from a meeting of the Church Association at Liverpool.

The Secretary reported that Henry Reeve, Esq., the Registrar of the Privy Council, would attend and give evidence on Thursday, March 9th, and that the Rev. Canon Trevor would do so on Friday, March 17th.

On the motion of MR. F. H. JEUNE, the names of  
Robert Baxter, Esq.,  
and F. Howard, Esq.,  
were ordered to be added to the list of witnesses.  
The REV. A. H. MACKONCHIE  
and L. R. VALPY, Esq.,  
were then examined.

#### TWENTY-FIFTH MEETING.

FRIDAY, MARCH 3RD, 1882.

The Right Hon. A. J. B. BERESFORD HOPE, M.P.,  
and The REV. MALCOLM MACCOLL  
were called in and examined.

#### TWENTY-SIXTH MEETING.

THURSDAY, MARCH 9TH, 1882.

The Secretary reported that  
R. Baxter, Esq.,  
and F. Howard, Esq.,  
would attend and give evidence on Friday, March 17th.

The Secretary read a letter from E. Herford, Esq., as to the evidence he would have given if summoned before the Commission.

The Secretary read a letter from C. H. Lovell, Esq., Vice-Chairman of the Church Association, bearing date March 4th, 1882, addressed to his Grace the Archbishop of Canterbury, asking that the council of the Association



might be furnished with the exact terms of the evidence as to the character of the promoters of the suit against the Rev. S. F. Green laid before the Commission by the churchwardens of Miles Platting, the general purport of which had been communicated to Mr. Valpy by the Secretary under the directions of his Grace the Archbishop of Canterbury, in a letter of February 27th last.

He was directed to inform Mr. Lovell that the Commissioners were not in a position to furnish any information on the subject beyond that contained in the Secretary's letter to Mr. Valpy.

The Secretary was instructed to write to J. Oakes, Esq., churchwarden of Miles Platting, to inform him that as doubts had been expressed as to the accuracy of the evidence of himself and his fellow witnesses of Miles Platting as to the character of two of the prosecutors of the suit against the Rev. S. F. Green, the Commissioners would be prepared to receive particulars in writing corroborative of the facts alleged.

DR. DEANE laid before the Commission a return furnished by the Registrar of the Court of Arches containing particulars of the costs in the cases referred to in the return furnished by the treasurer of the English Church Union. It was ordered to be printed and circulated.

SIR J. GELL,  
S. HARRIS, Esq.,  
H. REEVE, Esq.,

and The Rev. G. SARSON  
were then examined.

#### TWENTY-SEVENTH MEETING.

FRIDAY, MARCH 10TH, 1882.

The DEAN OF ST. PAUL'S and R. C. CHRISTIE, Esq., were examined; in the course of the examination the Archbishop of Canterbury being called away the Bishop of Winchester took the Chair.

#### TWENTY-EIGHTH MEETING.

THURSDAY, MARCH 16TH, 1882.

On the motion of the Bishop of Winchester the Chair was taken by the Archbishop of York.

The Secretary laid on the table 20 copies of the Dean of St. Paul's pamphlet on Church and State which the Dean had furnished for the use of the Commissioners. He was directed to convey the thanks of the Commissioners for the present.

The Secretary read a letter from Mr. Oakes relative to the evidence he hoped to be able to furnish in corroboration of the statements in his evidence which had been impugned.

The REV. CANON LIDDON, D.D.,  
and L. T. DIBDIN, Esq.,  
were then examined.

#### TWENTY-NINTH MEETING.

FRIDAY, MARCH 17TH, 1882.

The Secretary reported that replies to the questions issued by the Commissioners relative to ecclesiastical procedure in the Established Church of Scotland had been received. He was directed to convey the thanks of the Commissioners to the gentleman who had furnished them.

The Secretary announced that he had received from the Archbishop of Canterbury a letter addressed to his Grace by E. A. Freeman, Esq., as to the mode in which ecclesiastical matters were dealt with in the civil courts in the United States of America, which letter the Archbishop thought should be printed and circulated among the Commissioners. It was ordered to be printed and circulated.

It was moved by the EARL OF DEVON, and seconded by the DEAN OF PETERBOROUGH—

That the Commission do not at present see any reason for inviting the attendance of any further witnesses.

*Carried.*

The EARL OF DEVON also moved—

That the Commission do not discuss the Report until June.

*The motion, not being seconded, dropped.*

The BISHOP OF OXFORD moved—

That it is desirable in the first place to examine the changes which have been made by statutes passed since 1832, when the Report of the former Commission was presented, in order to draw up a statement of the actual condition of the ecclesiastical jurisdiction, as compared with that which was contained in the Report.

*Ayes 3, Noes 4, Lost.*

The DEAN OF PETERBOROUGH moved—

That at the next meeting the Commission consider the Court of First Instance and the Preliminary Commission.

*Ayes 7, Noes 6, Carried.*

On the motion of CANON STUBBS it was ordered that a memorandum which was being prepared by the Dean of St. Paul's relating to the "appel comme d'abus" should be printed for the use of the Commission.

The REV. CANON TREVOR, D.D.,  
R. BAXTER, Esq.,  
and F. HOWARD, Esq.,  
were then examined.

#### THIRTIETH MEETING.

THURSDAY, MAY 4TH, 1882.

The Secretary read a letter from the Rev. C. H. Davis. It was ordered to be laid on the table.

The Secretary reported that he had during the recess received and circulated among the Commissioners copies of a privately printed pamphlet by J. P. Fleming, Esq., on the Commissions issued for ecclesiastical causes during the years 1559-1689, which copies had been presented to the Commissioners by Mr. Fleming. He was directed to thank Mr. Fleming.

The Secretary reported that he had received a letter from the Rev. R. W. Kennion accompanied by some extracts from a work entitled "Jura Ecclesiastica," published in 1749, which would be forwarded to the Commission with 25 copies of a pamphlet by Mr. Kennion on the subject. He was directed to thank Mr. Kennion.

The Secretary reported that he had received replies to the questions as to the ecclesiastical procedure from Norway, and the additional replies from Belgium, which had been asked for by the Commissioners, and that the replies promised by the Foreign Office were now complete.

He was directed to convey the thanks of the Commissioners to Earl Granville.

The Secretary also reported that he had received replies from

Goulburn,  
Ballaarat,  
Sydney,  
and Newcastle

through the Rev. W. Cowper, the Commissary of the Bishop of Sydney, and that these completed the replies which had been asked for. He was directed to convey the thanks of the Commissioners to Mr. Cowper.

The Secretary was instructed to add to the evidence of the under-mentioned gentlemen, who had been examined before the Commission, the several matters following, viz. to the evidence of

Sir J. Gell, an appendix marked C.  
Mr. F. Howard, correspondence marked B.  
Mr. H. Reeve, a letter.  
Mr. H. R. Droop, notes on historical points.  
The Rev. A. H. Mackonochie, a letter.

The Secretary read a letter from Mr. J. Oakes, stating that the date of the conviction of one of the promoters of the suit against the Rev. S. F. Green was August 27th 1868, and that it was before H. W. West, Esq., Q.C., the Recorder of Manchester.

He also read a letter from the Secretary of the Manchester branch of the Church Association to the effect that Mr. R. Phillips, the Honorary Lay Secretary of the branch was competent and willing to give evidence upon the Miles Platting case. He was instructed to reply that the Commissioners would hear evidence from him as to the character of the promoters, and the steps taken by the Church Association to ascertain the character of the promoters, but only on those points.



The Secretary presented a memorial from the Church Association which was accompanied by 30 printed copies.

It was ordered that the memorial should be laid on the table and the copies be circulated among the Commissioners.

The Commissioners proceeded to discuss the Court of First Instance and the Preliminary Commission, and the discussion was adjourned to the next meeting.

### THIRTY-FIRST MEETING.

FRIDAY, MAY 5TH, 1882.

The Secretary read a letter from the Attorney-General of the Isle of Man, expressing a wish that the late Governor might be examined as to the undesirability of including the Isle of Man in Acts of Parliament which relate to the procedure in Ecclesiastical Courts, &c. He was directed to inform Sir J. Gell of the resolution of the Commissioners of Friday March 17th.

The Commissioners continued the discussion of the Preliminary Commission and the discussion was adjourned to the next meeting.

### THIRTY-SECOND MEETING.

THURSDAY, MAY 11TH, 1882.

The Secretary presented a memorial from the Venerable Sir George Prevost, Bart., and others, as to the Ecclesiastical Courts. It was ordered to be laid on the table.

The Secretary presented a resolution from the Upper House of Convocation of the Province of Canterbury, referring to resolutions of the Lower House on the relations of Church and State, and requesting the President to communicate them to this Commission. The resolutions of both Houses were ordered to be added to the minutes of evidence.

The Secretary was directed to add a memorandum by Canon Trevor as to the fees levied on the clergy on documents under the seal of the Bishop's Court as an appendix (B.) to his evidence.

The Secretary read a letter from R. Phillips, Esq., Honorary Lay Secretary of the Manchester branch of the Church Association, in reply to that sent by directions of the Commissioners. He stated that he would be ready to give evidence as to the characters of the promoters in the suit against the Rev. S. F. Green, and the steps taken by the Church Association to ascertain those characters.

SIR R. PHILLIMORE made a communication as to the coercive jurisdiction of the Dean of the Arches. It was ordered to be printed.

The Commissioners continued the discussion of the Preliminary Commission, and the discussion was adjourned to Thursday, May 25th.

### THIRTY-THIRD MEETING.

FRIDAY, MAY 12TH, 1882.

The Commissioners discussed the Court of First Instance in cases of immorality and neglect of duty.

In the course of the discussion, the President being called away, the Chair was taken by the Earl of Devon. The discussion was adjourned.

On the motion of the BISHOP OF OXFORD, seconded by CANON WESTCOTT, the Secretary was directed to obtain copies of the patents of the chancellors of the various dioceses of Canterbury and York, and to prepare a return showing the power of the bishops to alter the patents of their chancellors and to fix rules of procedure, and also a return giving an account of the present constitution and powers of the consistory courts, with the variations (if any) which exist in different dioceses.

### THIRTY-FOURTH MEETING.

THURSDAY, MAY 25TH, 1882.

The Secretary laid on the table two letters on the ecclesiastical courts from the Rev. J. Foxley, Vicar of Market Weighton, Yorkshire.

R. PHILLIPS, Esq., Honorary Lay Secretary of the Manchester branch of the Church Association, was called in and examined, and his examination was concluded.

The Commissioners continued the adjourned discussion on the Preliminary Procedure in cases of misconduct and neglect of duty.

The discussion was further adjourned.

### THIRTY-FIFTH MEETING.

FRIDAY, MAY 26TH, 1882.

On the motion of the REV. A. C. AINSLIE the Secretary was instructed to ask for the rules of court with regard to the granting of faculties in the various dioceses of England and Wales in addition to the other returns ordered to be obtained.

The Commissioners discussed the Preliminary Procedure and the Court of First Instance in cases of immorality and neglect of duty.

The discussion was adjourned.

### THIRTY-SIXTH MEETING.

THURSDAY, JUNE 8TH, 1882.

The Chair was taken by the Archbishop of York.

The Commissioners considered the Court of First Instance and the Provincial Court in cases of misconduct and neglect of duty. The discussion was adjourned.

The Secretary asked for further instructions as to the returns he was to obtain from the diocesan registrars of England and Wales.

He was directed to limit his application to a request for—

- (a.) Copies of the patents of the present chancellors.
- (b.) In cases in which there had been variations in the terms of the patents at different periods, statements as to the occasions on which such variations had been made, and as to the nature of the variations; copies of earlier patents being furnished, if necessary.
- (c.) Copies of the rules of procedure in the consistory courts, including those in the case of faculties.

### THIRTY-SEVENTH MEETING.

FRIDAY, JUNE 9TH, 1882.

On the motion of the MARQUIS OF BATH the Chair was taken by the Earl of Devon, and subsequently, on the motion of the EARL OF DEVON, by the Archbishop of York.

On the motion of the REV. CHANCELLOR ESPIN the return ordered as to the patents of the chancellors was ordered to be confined for the present to those issued in the present century.

The Commissioners continued the discussion of the Courts of Intermediate and Ultimate Appeal in cases of misconduct and neglect of duty.

### THIRTY-EIGHTH MEETING.

THURSDAY, JUNE 15TH, 1882.

The Commissioners proceeded to discuss the Court of Final Appeal in matters of misconduct and neglect of duty, and the Court of First Instance in cases of doctrine and ritual.

### THIRTY-NINTH MEETING.

FRIDAY, JUNE 16TH, 1882.

The Commissioners discussed the Preliminary Procedure in cases of doctrine and ritual.

The discussion was adjourned.



## FORTIETH MEETING.

THURSDAY, JUNE 22ND, 1882.

The Commissioners continued the discussion of the Preliminary Procedure in cases of heresy and breach of ritual.

The discussion was adjourned.

In the course of the discussion, the Archbishop of Canterbury being called away, the Chair was taken by the MARQUIS OF BATH.

## FORTY-FIRST MEETING.

FRIDAY, JUNE 23RD, 1882.

The Secretary read a letter from Dr. W. G. F. Phillimore relative to the state of the law with regard to the exercise of bishops and their officers of ecclesiastical jurisdiction in those portions of dioceses which were put under new bishops under the provisions of the Ecclesiastical Commission Act.

The matter was ordered to be brought forward again for consideration at a later stage, and the Secretary was directed to thank Dr. Phillimore for his letter.

The Commissioners continued the discussion of the Preliminary Proceedings in cases of heresy and breach of ritual.

## FORTY-SECOND MEETING.

THURSDAY, JUNE 29TH, 1882.

The Commissioners discussed the Court of First Instance in cases of doctrine and ritual and commenced the discussion of the Provincial Courts in the same class of cases.

During the discussion, the Archbishop of Canterbury being called away, on the motion of the EARL OF CHICHESTER the Chair was taken by the EARL OF DEVON.

## FORTY-THIRD MEETING.

FRIDAY, JUNE 30TH, 1882.

The Commissioners continued the discussion of the Provincial Courts in cases of doctrine and ritual.

The discussion was adjourned.

## FORTY-FOURTH MEETING.

THURSDAY, JULY 6TH, 1882.

THE ARCHBISHOP OF CANTERBURY communicated to the Commission replies which had been received from the Registrars of the Arches, the Faculties, and the Chancery Court of York as to the salaries of the Dean of the Arches, the Master of the Faculties and the Official Principal and Auditor of the Chancery Court of York. The replies were ordered to be printed.

The Commissioners continued the discussion of the Provincial Courts in cases of heresy and breach of ritual and commenced the discussion of the Final Court of Appeal in such cases.

During the course of the proceedings, the Archbishop of Canterbury being called away, the Chair was taken by the MARQUIS OF BATH.

## FORTY-FIFTH MEETING.

FRIDAY, JULY 7TH, 1882.

The Commissioners continued the discussion of the Court of Final Appeal in cases of heresy and breach of ritual.

The discussion was adjourned.

## FORTY-SIXTH MEETING.

THURSDAY, JULY 13TH, 1882.

The Secretary laid before the Commissioners a letter received by the Archbishop of Canterbury, addressed to the Commissioners by H. Reeve, Esq., C.B., Registrar of the Privy Council, as to the recent judgment of the Judicial Committee in the case of *Merriman v. Williams*.

R 8592.

On the motion of CANON STUBBS, seconded by the REV CHANCELLOR ESPIN, copies of the judgment referred to were ordered to be circulated among the Commissioners.

The Commissioners continued the discussion of the Final Court of Appeal in cases of heresy and breach of ritual.

The discussion was adjourned.

## FORTY-SEVENTH MEETING.

FRIDAY, JULY 14TH, 1882.

The Secretary was instructed to append the letter received from Mr. Reeve to the minutes of his evidence.

The Commissioners continued the discussion of the Final Court of Appeal in cases of heresy and breach of ritual.

The discussion was adjourned.

## FORTY-EIGHTH MEETING.

THURSDAY, JULY 20TH, 1882.

On the motion of the BISHOP OF OXFORD, seconded by the DEAN OF PETERBOROUGH, it was resolved that—

Canon Westcott,  
„ Stubbs, and  
Mr. E. A. Freeman

be appointed as a Committee to frame drafts of those portions of the Report which will deal with—

- (1.) The origin and nature of the ecclesiastical jurisdiction over clergy and laity.
- (2.) The principle of the limitations and restraints of it imposed by the civil power.
- (3.) An account of the courts which have exercised ecclesiastical jurisdiction in England—
  - (a) before the Norman Conquest;
  - (b) from the Norman Conquest to the Reformation;
  - (c) from the Reformation to the year 1832.
- (4.) The system of ecclesiastical jurisdiction and procedure in colonial and foreign Anglican Churches.

On the motion of the ARCHBISHOP OF CANTERBURY seconded by CANON WESTCOTT, it was resolved that

The Rev. Chancellor Espin,  
Mr. A. Charles,  
and Mr. F. H. Jeune

be appointed as a Committee to frame a draft of that portion of the Report which will consist of an account of the courts before which ecclesiastical cases could have been brought from 1832 to the present time, and of the procedure therein.

The Commissioners continued the discussion of the Court of Final Appeal in cases of heresy and breach of ritual.

## FORTY-NINTH MEETING.

FRIDAY, JULY 21ST, 1882.

On the motion of CANON WESTCOTT, the Secretary was instructed to apply to the Foreign Office with the view of obtaining replies as to the ecclesiastical procedure in the Greek Church in Greece.

The reference to the Committee appointed on Thursday to frame a draft of those portions *inter alia* of the Report which will deal with the systems of ecclesiastical jurisdiction and procedure in colonial and foreign Anglican Churches was ordered to be amended so as to substitute for the words “colonial and foreign Anglican Churches” the words “Churches in communion with the Church of England and other.”

The reference to the Committee appointed on the same day to frame a draft of that portion of the Report which will consist of an account of the courts before which ecclesiastical cases could have been brought from 1832 to the present time, and of the procedure therein, was ordered to be amended by adding the words, “and the penalties which could be inflicted.”

The Commissioners discussed various miscellaneous points.



It was moved by SIR R. A. CROSS and seconded by the EARL OF CHICHESTER—That the Commissioners do commence their proceedings on Thursday, November 2nd, with the further consideration of the Court of Final Appeal.

To this an amendment was moved by the MARQUIS OF BATH, and seconded by DR. DEANE—

That the Court of Final Appeal be not considered until the meeting of Parliament in the spring of 1883.

*Ayes 4, Noes 5, Lost.*

*The original motion was then put and carried nem. con.*

The Secretary was instructed to have printed off for the use of the Commissioners a sufficient number of copies of the suggestions which had been made in accordance with the motion of the Archbishop of York of November 25th, 1881, and to instruct the Queen's Printer that no further copies would be required.

#### FIFTIETH MEETING.

THURSDAY, NOVEMBER 2ND, 1882.

On the motion of the EARL OF DEVON the Chair was taken by the ARCHBISHOP OF YORK.

The Secretary reported that he had received from the Foreign Office replies as to the ecclesiastical procedure in the Greek Church in Greece. He was directed to convey the thanks of the Commissioners to Earl Granville.

The Secretary reported that he had received replies from the registrars of the dioceses of England and Wales as to the patents of the chancellors and the rules of procedure in the diocesan courts, except in one or two cases, in which he hoped shortly to receive the information required.

The Commissioners discussed the Court of Final Appeal.

The discussion was adjourned.

#### FIFTY-FIRST MEETING.

FRIDAY, NOVEMBER 3RD, 1882.

On the motion of the EARL OF DEVON, seconded by the DEAN OF PETERBOROUGH, the Chair was taken by the ARCHBISHOP OF YORK.

The Secretary read a letter the Rev. R. W. Kennion enclosing copies of a paper read by him at the Church Congress at Derby on "Disciplinary Laws as affecting the Clergy." He was directed to thank Mr. Kennion.

The Commissioners discussed the Court of Final Appeal.

The discussion was adjourned.

#### FIFTY-SECOND MEETING.

THURSDAY, NOVEMBER 16TH, 1882.

On the motion of the BISHOP OF WINCHESTER, the Chair was taken by the EARL OF CHICHESTER.

The Secretary read a letter from the Rev. C. H. Davis as to the imprisonment for contempt of court and other matters.

MR. A. CHARLES laid on the table the draft of the portion of the Report which had been prepared by the Rev. Chancellor Espin, Mr. F. H. Jeune, and himself, in accordance with the resolution of the Commissioners of Thursday, July 20th, and Friday, July 21st.

The Secretary asked for instructions as to the course he was to pursue with regard to the patents of the diocesan chancellors, of which he had received copies in answer to the circular sent to the registrars of the various dioceses of England and Wales.

On the motion of the REV. CHANCELLOR ESPIN, it was ordered that the patents be printed in full.

The Commissioners discussed the Court of Final Appeal.

The discussion was adjourned.

#### FIFTY-THIRD MEETING.

FRIDAY, NOVEMBER 17TH, 1882.

On the motion of the EARL OF DEVON, the Chair was taken by the ARCHBISHOP OF YORK.

The Commissioners deliberated on various miscellaneous points.

On the motion of the BISHOP OF OXFORD, seconded by the EARL OF DEVON, it was resolved that at the next meeting the Commissioners should commence to consider their Report.

#### FIFTY-FOURTH MEETING.

THURSDAY, FEBRUARY 22ND, 1883.

On the motion of the MARQUIS OF BATH, seconded by the ARCHBISHOP OF YORK, the ARCHBISHOP OF CANTERBURY (elect) was unanimously elected President of the Commission.

On the Motion of SIR R. CROSS seconded by SIR W. C. JAMES, it was ordered that the motions of which notice had been given should be postponed until the matters of which there had been already a preliminary discussion had been disposed of.

It was moved by the BISHOP OF WINCHESTER and seconded by the REV. CHANCELLOR ESPIN, That in cases of heresy and breach of ritual, the Commission prescribed by the Church Discipline Act, 1840, is unnecessary and its continuance is inexpedient.

*Ayes 9, Noes 0, Carried.*

It was moved by the ARCHBISHOP OF YORK and seconded by the REV. CHANCELLOR ESPIN, That in cases of immorality and neglect of duty, the Commission prescribed by the Church Discipline Act, 1840, is unnecessary and its continuance is inexpedient.

*Ayes 8, Noes 4, Carried.*

It was moved by MR. WHITBREAD, and seconded by SIR R. CROSS, That in every case of any clerk in Holy orders charged with misconduct or neglect of duty, the person making the charge shall be deemed the complainant, and if the person making the charge shall be unwilling to go on with it, the Bishop shall direct some person or persons whom he may deem competent for the purpose to inquire into the truth and inform him upon it; and in the case of any such clerk concerning whom there may exist scandal or evil report, the Bishop may direct, if he shall think fit, some person or persons whom he may deem competent for the purpose to inquire into the truth of the scandal or evil report and inform him thereon.

*Ayes 15, Noes 0, Carried.*

It was moved by SIR R. CROSS, and seconded by LORD COLERIDGE, That any offence against the laws ecclesiastical, alleged or reported to have been committed in any place by a clerk holding preferment shall be within the cognizance of the Bishop of the Diocese within which the preferment is situate, or of the diocese in which the offence is alleged or reported to have been committed. In the case of a clerk holding no preferment the offence shall be within the cognizance of the Bishop of the Diocese in which he resides, or in which the offence is alleged or reported to have been committed.

*Ayes 11, Noes 0, Carried.*

It was moved by SIR R. CROSS, and seconded by DR. DEANE, That upon consideration of the complaint if one be made, or of the information which the Bishop has obtained, as the case may be, if the Bishop thinks the case is one in which proceedings should be taken, he shall give leave to the complainant to proceed, or if there be no complainant willing to proceed, shall appoint some person to be the complainant.

*Ayes 7, Noes 0, Carried.*

#### FIFTY-FIFTH MEETING.

FRIDAY, FEBRUARY 23RD, 1883.

On the Motion of the ARCHBISHOP ELECT OF CANTERBURY, seconded by the MARQUIS OF BATH it was resolved unanimously that—



The Royal Commission on Ecclesiastical Courts desire to record their deep sense of the loss which this Commission has, in common with the whole Church and the nation, sustained by the death of the Archbishop of Canterbury.

As Chairman of the Commission his wisdom, experience, and tact, constantly guided the course of their deliberations and smoothed the difficulties of their labour.

His comprehensive consideration as a statesman of the mutual relations of various lines of inquiry and of their united bearing, not only upon religious feeling but upon national life, were of the utmost practical value; whilst the confidence he repeatedly expressed that the investigations and counsels of the Commissioners would lead to results of high advantage to the people and church of Christ in England remain, not only to his colleagues, but to many others as a bright encouragement.

They rejoice to be able to feel that their preliminary inquiries were conducted under his direction.

On the Motion of the BISHOP OF WINCHESTER, seconded by the EARL OF DEVON it was resolved unanimously—

That his Grace the Archbishop Elect of Canterbury be requested to communicate the foregoing Resolutions to the family of the late Archbishop of Canterbury.

It was moved by MR. S. WHITBREAD, and seconded by SIR R. A. CROSS, That when proceedings are about to be commenced by any person against any clerk for any offence against the laws ecclesiastical in respect of matters of Doctrine or Ritual, if both parties agree, the case may be referred to the Bishop who shall have power to hear the matter in such manner as he shall think fit, and shall pronounce such judgment and issue such motion (if any) as he may think proper, and no appeal shall lie from any such judgment or monition.

*Ayes 10, Noes 0, Carried.*

It was moved by the BISHOP OF WINCHESTER, and seconded by the EARL OF DEVON, That in cases of offences against the laws ecclesiastical in respect of matters of Ritual or Doctrine, any of the following persons (provided they be members of the Church of England) may be complainants:—

(a.) The archdeacon of the archdeaconry wherein the offence is committed.

(b.) A churchwarden of the parish wherein the offence is committed.

(c.) Five parishioners (as defined by the Public Worship Regulation Act, 1874) of the parish wherein the offence is committed.

To that an amendment was moved by the REV. CHANCELLOR ESPIN, and seconded by SIR WALTER C. JAMES, That all after the word “any” be omitted, and that the word “member of the Church of England being a male of full age may be complainant” be substituted.

On the Motion of the ARCHBISHOP OF YORK, seconded by the DEAN OF PETERBOROUGH, the discussion of the motion and amendment were adjourned.

## FIFTY-SIXTH MEETING.

THURSDAY, MARCH 8TH, 1883.

On the motion of the ARCHBISHOP OF YORK, seconded by the BISHOP OF WINCHESTER, the Chair was taken by the EARL OF DEVON.

The Chairman read a letter from the ARCHBISHOP OF CANTERBURY regretting that as he had received Her Majesty's commands to do homage at Windsor, he would be unable to be present at the meeting.

On the motion of the ARCHBISHOP OF YORK, seconded by SIR R. A. CROSS, it was resolved that the discussion adjourned from Friday, February 23rd, be proceeded with on Friday, March 9th.

The Secretary laid on the table copies of pamphlet by LORD BLACHFORD entitled, “Some Account of the Legal Development of the Colonial Episcopate.”

The Secretary read a letter from the REV. C. H. DAVIS. It was ordered to be laid on the table.

It was moved by the BISHOP OF OXFORD, and seconded by the BISHOP OF WINCHESTER—

That in cases of immorality and neglect of duty the Diocesan Court shall consist of the bishop with whom shall sit as legal assessor the chancellor of the diocese, or some other person learned in the law at the discretion of the bishop; except in cases where the bishop shall call upon the chancellor to hear the case alone.

*Ayes 10, Noes 0, Carried.*

It was moved by CANON WESTCOTT, and seconded by CANON STUBBS—

That there shall, if the accused party desire it, be a jury consisting of three beneficed clergymen and three lay magistrates, all of the diocese, and being communicant members of the Church of England. The decision of the jury shall be that of a majority of at least two-thirds.

*Ayes 4, Noes 9, Lost.*

It was moved by MR. E. A. FREEMAN, and seconded by the DEAN OF PETERBOROUGH—

That in cases of Heresy and Breach of Ritual, the Diocesan Court shall consist of the bishop, with whom shall sit a legal and a theological assessor. The legal assessor shall be the chancellor of the diocese, or some other person learned in the law at the discretion of the bishop.

*Ayes 12, Noes 0, Carried.*

It was moved by CANON STUBBS, and seconded by CANON WESTCOTT—

That the Commission desire to recognise the principle that in the constitution of the Diocesan Court the judicial authority resides in and proceeds from the bishop alone.

To that an amendment was moved by the EARL OF DEVON, and seconded by the ARCHBISHOP OF YORK—

That the words “proceed from” be omitted, and that the words “should be exercised by,” be substituted.

*Ayes 12, Noes 0, Carried.*

A further amendment was moved by MR. JEUNE, and seconded by MR. WHITBREAD—

That the words “resides in and” be omitted.

*Ayes 5, Noes 7, Lost.*

The original motion was then put.

*Carried.*

It was moved by the BISHOP OF WINCHESTER, and seconded by MR. E. A. FREEMAN—

That in cases of Heresy and Breach of Ritual the theological assessor should be either a comprovincial bishop, or the dean of the cathedral church of the diocese, or a divinity professor of one of the English Universities, such assessor to be chosen *pro hac vice* by the dean and chapter, and if there be no dean and chapter, by the bishop himself.

To that an amendment was moved by the BISHOP OF OXFORD and seconded by the ARCHBISHOP OF YORK—

That all after the words “*pro hac vice*” be omitted, and that there be substituted the words “by the bishop with the advice of the dean and chapter, if there be any.”

*Ayes 7, Noes 6, Carried.*

A further amendment was moved by MR. A. CHARLES, and seconded by the DEAN OF PETERBOROUGH—

That the words “should be either, &c.,” down to “such assessor” be omitted, and that there be substituted the words “shall.”

*Ayes 7, Noes 5, Carried.*

The original motion, as amended, was then put.

*Carried.*

It was moved by the BISHOP OF WINCHESTER, and seconded by the ARCHBISHOP OF YORK—

That the following words be added, “In case of the inability of a bishop to sit, he shall appoint one of his comprovincial bishops to sit in his place. In case of mental malady the nomination shall rest with the archbishop of the province.”

*Carried.*

It was moved by the BISHOP OF WINCHESTER, and seconded by CANON STUBBS—

That by the term “assessor” is to be understood “a person who advises the judge, but has no voice in any decision.”

*Carried.*



## FIFTY-SEVENTH MEETING.

FRIDAY, MARCH 9TH, 1883.

It was moved by the ARCHBISHOP OF YORK, and seconded by the BISHOP OF WINCHESTER—

That to the resolution “in the case of mental malady the nomination shall rest with the archbishop of the province” there be added the words “save in cases where a coadjutor bishop has been appointed under the Act of 1869, in which cases the coadjutor shall have the same power as the bishop.”

*Ayes 9, Noes 0, Carried.*

It was moved by the BISHOP OF WINCHESTER, and seconded by the REV. CHANCELLOR ESPIN—

That in cases of immorality and neglect of duty in the case of mental malady of the bishop, the archbishop of the province shall call upon the chancellor of the diocese to act alone; save in cases where a coadjutor bishop shall have been appointed under the Act of 1869, in which cases the coadjutor shall have the same powers as the bishop.

*Carried.*

The adjourned discussion of the motion of the BISHOP OF WINCHESTER was resumed.

It was moved by SIR R. A. CROSS, and seconded by SIR R. PHILLIMORE—

That nothing has been brought to the notice of the Commission to lead them to recommend any alteration in the law which leaves it to the bishop to give permission to the complainant to proceed, and therefore they see no reason for restraining the general power of making a complaint in the first instance as provided in the Church Discipline Act.

To that an amendment was moved by the ARCHBISHOP OF YORK, and seconded by the DEAN OF PETERBOROUGH—

That the investing the bishop, with the unconditional and uncontrolled power of veto on any complaint against a clergyman, would deprive the laity of the power of obtaining a decision in cases of wrong, and would lead to variety of practice in different dioceses; and would also be invidious towards the bishop as making him practically the prosecutor in every case, where proceedings went on. That these evils would be much diminished if the bishop, when refusing to allow a resort to the courts, were bound to give his direction and decision on the matter of the complaint, such direction being held binding unless appealed against in the First Court of Appeal.

*Ayes 4, Noes 14, Lost.*

The amendment of SIR R. A. CROSS was then put.

*Ayes 14, Noes 4, Carried.*

## FIFTY-EIGHTH MEETING.

THURSDAY, MARCH 15TH, 1883.

The motion of the BISHOP OF WINCHESTER as to promoters in cases of heresy and breach of ritual was by leave withdrawn, and the amendment thereto, moved by the REV. CHANCELLOR ESPIN, in consequence dropped.

It was moved by SIR R. A. CROSS, and seconded by the DEAN OF DURHAM—

That in cases of heresy and breach of ritual in every case in which the Bishop refuses to give permission to a complainant to proceed he shall specifically state in writing his reasons for such refusal, and such statement shall be deposited in the registry of the diocese, and a copy thereof shall be forthwith transmitted to the complainant and to the person complained of.

*Carried.*

It was moved by MR. F. H. JEUNE—

That the reservation of jurisdiction to the Court of the Province in case of a Bishop refusing to allow a prosecution, contained in the 19th section of the Church Discipline Act, 1840, should be continued.

*The motion not being seconded dropped.*

It was moved by the REV. CHANCELLOR ESPIN, and seconded by LORD COLERIDGE—

That in cases of heresy and breach of ritual the complainant shall represent to the Bishop in writing the particulars of the offence charged.

*Carried.*

It was moved by CANON WESTCOTT, and seconded by the REV. CHANCELLOR ESPIN—

That in cases of heresy and breach of ritual the complainant shall, when he forwards the representation to the Bishop, also furnish a copy thereof to the clerk complained of.

*Carried.*

It was moved by MR. S. WHITBREAD, and seconded by SIR R. A. CROSS—

That the following resolutions be added to those already passed as to preliminary procedure:—

Whereupon, in all cases, a citation at the instance of the complainant shall issue in the name of the Bishop from the Registry of the Diocese warning the clerk accused to appear before the Bishop at a stated time and place.

This citation shall, in cases of immorality and neglect of duty, be endorsed with a short statement of the particulars of the offence or offences charged, and in cases of heresy and breach of ritual be accompanied by a copy of the representation which has been made to the Bishop.

In cases of immorality and neglect of duty the endorsed citation, and in cases of heresy and breach of ritual the citation and representation, shall be served upon the clerk, who may either at once submit to the sentence of the Bishop, or if he does not submit, shall in writing join issue or state shortly the nature of his defence to the charge or charges made in the endorsement or representation.

In all cases if the clerk submit to the sentence of the Bishop, the Bishop may, with the consent of the complainant, pronounce such sentence as he may think fit, not exceeding the sentence which might be pronounced in due course of law, and all such sentences shall be as good and effectual as if pronounced after the hearing, and may be enforced by the like means.

In all cases if the clerk does not submit, or if, on the submission of the clerk, the complainant refuse to consent to the Bishop pronouncing sentence without trial, the complainant shall be at liberty to set down the case for hearing before the Diocesan Court.

*Carried.*

It was moved by the BISHOP OF WINCHESTER, and seconded by the DEAN OF DURHAM—

That in the opinion of the Commissioners it is highly desirable that in drafting the Report special attention should be directed to the passage in the preface to the Prayer Book hereafter recited, the intention of which was evidently to provide a paternal authority, a *forum domesticum* to which the clergyman and his parishioners, when not agreed on matters of ritual, should always appeal, and except in very extreme cases avoid the danger of litigation.—“And, forasmuch as nothing can be so plainly set forth, but doubts may arise in the use and practice of the same; to appease all such diversity (if any arise) and for the resolution of all doubts concerning the manner how to understand, do and execute the things contained in this book: the parties that so doubt, or diversely take anything, shall alway resort to the Bishop of the Diocese, who, by his discretion shall take order for the quieting and appeasing of the same; so that the same order be not contrary to anything contained in this book. And if the Bishop of the Diocese be in doubt, then he may send for the resolution thereof to the Archbishop.”

*Carried.*

It was moved by the DEAN OF PETERBOROUGH, and seconded by SIR R. A. CROSS—

That the Provincial Court shall in cases of immorality and neglect of duty consist of the official Principal in the Provinces of Canterbury and York, whether those offices shall be vested in one person or in two.

*Carried.*

It was moved by MR. E. A. FREEMAN, and seconded by the BISHOP OF WINCHESTER—

That in cases of heresy and breach of ritual, when an appeal is made or a case is sent to the Provincial Court, it shall be forwarded to the Archbishop in person, and he shall pronounce whether—



- (a.) He will leave it for the decision of his official Principal, or
- (b.) Will hear it himself, assisted by his Official Principal as assessor, in which latter case the Archbishop may, if he think fit, appoint any number not exceeding five of theological assessors to sit with the Court.

*Carried.*

It was understood that in voting for this resolution the Commissioners reserved the right of reconsidering the matter after they have determined the constitution of the Court of Final Appeal.

## FIFTY-NINTH MEETING.

FRIDAY, MARCH 16TH, 1883.

It was moved by the BISHOP of WINCHESTER, and seconded by the DEAN of DURHAM—

That to the resolution as to the constitution of the Provincial Court in cases of heresy and breach of ritual there be added the words, "Every such theological assessor shall be a Bishop within the province, or a professor past or present of one of the English Universities."

To that an amendment was moved by DR. DEANE—

That all after the word "province" be omitted.

*The amendment not being seconded dropped.*

The motion was then put.

*Carried.*

It was moved by SIR R. A. CROSS, and seconded by the REV. CHANCELLOR ESPIN—

That the Archbishop of Canterbury shall appoint the same person to hold the office of Official Principal and Master of the Faculties.

*Carried.*

It was moved by SIR R. A. CROSS, and seconded by MR. F. H. JEUNE—

That the Archbishops of Canterbury and York may, if they think fit, appoint the same person to hold the office of Official Principal for the Province of Canterbury, and Official Principal or Auditor of the Chancery of York.

*Carried.*

It was moved by the EARL OF CHICHESTER, and seconded by the DEAN of PETERBOROUGH—

That such person shall be one who is or has been a Lord of Appeal, or has been a Judge of the Supreme Court of Judicature, or has been in actual practice as a barrister-at-law for ten years, and he shall be appointed during good behaviour.

*Carried.*

It was moved by MR. A. CHARLES, and seconded by the EARL OF CHICHESTER—

That every person so appointed shall, before entering on his office, sign the following declaration:—I do hereby solemnly declare that I am a member of the Church of England as by law established.

*Carried.*

It was moved by SIR R. A. CROSS, and seconded by the REV. CHANCELLOR ESPIN—

That he shall further take the oath and make the declaration required by the 127th canon of 1604.

*Carried.*

It was moved by CANON WESTCOTT, and seconded by CANON STUBBS—

That in the opinion of the Commissioners it is desirable that in drafting the Report notice be taken of the right of the Archbishop to take counsel with his provincial Bishops, and having regard to the formularies of the Church, and the circumstances of the time, to issue such statements on subjects brought into dispute as may seem to be required.

*Ayes 9, Noes 7, Carried.*

It was moved by the EARL OF CHICHESTER, and seconded by LORD COLERIDGE—

That the bishop may if he thinks proper send a case direct to the Provincial Court if both parties consent.

*Carried.*

It was moved by MR. F. H. JEUNE, and seconded by LORD COLERIDGE—

That whenever a Bishop is patron of any benefice held by an accused clerk, the Archbishop of the province shall in all matters act in his place, and whenever an Archbishop is such patron, then the senior Bishop in the province according to date of consecration who is not such patron, shall in all matters act in the place of the Archbishop.

*Carried.*

It was moved by the DEAN of PETERBOROUGH, and seconded by MR. F. H. JEUNE—

That the Diocesan Court and the Provincial Court shall have power to examine witnesses on oath.

*Carried.*

## SIXTIETH MEETING.

THURSDAY, APRIL 5TH, 1883.

The Secretary read a letter from Mr. Girdlestone requesting that certain corrections of matters of fact might be made in his evidence. The Secretary was directed to make the corrections.

It was moved by SIR R. A. CROSS, and seconded by the DEAN of PETERBOROUGH—

That an appeal shall lie in all cases from the Court of the Archbishop to the Crown, and that the Crown shall appoint a permanent body of lay judges learned in the law to whom such appeals shall be referred.

To that an amendment was moved by CANON STUBBS, and seconded by the MARQUIS OF BATH—

That for lack of justice at or in any of the Courts of the Archbishops of this realm, it shall be lawful to the parties grieved to appeal to the Queen's Majesty in Council; and that upon every such appeal the petition of the appellant shall be referred to the Lord Chancellor to examine into the same and report his opinion thereupon to Her Majesty at that board; and that, if the Lord Chancellor certify that, on consideration of the petition, and having heard parties by their counsel, he considers the points of law which arose on the proceedings so important that it is fit that they should be heard and determined in the most solemn manner, he shall further report what those points are and whether they are points concerning temporal rights or spiritual law, and thereupon it shall be ordered that the points defined to be of temporal or civil right be determined by the Judicial Committee of the Privy Council [or by the House of Lords, if Her Majesty, with the advice of the Privy Council, shall so please], and the points defined to be of spiritual law by the Archbishops and Bishops of the two Provinces, who shall for the purposes of these appeals be constituted and recognised as a court of doctrine.

*Ayes 4, Noes 12, Lost.*

An amendment was also moved by MR. E. A. FREEMAN—

That the words "of lay judges learned in the law," be omitted, and that for the word "whom" there be substituted the word "which."

*The motion not being seconded dropped.*

An amendment was also moved by the MARQUIS OF BATH, and seconded by the REV. A. C. AINSLIE—

That after the first "that" there be added the words "for lack of justice."

*Ayes 8, Noes 9, Lost.*

The original motion was then put.

*Ayes 15 Noes 2, Carried.*

It was moved by SIR R. A. CROSS, and seconded by the DEAN of PETERBOROUGH—

That every person so appointed shall, before entering on his office, sign the following declaration—

I do hereby solemnly declare that I am a member of the Church of England, as by law established.

*Ayes 16, Noes 0, Carried.*

It was moved by SIR R. A. CROSS, and seconded by the DEAN of PETERBOROUGH—

That in cases of heresy and breach of ritual the judges shall have the power of consulting the Arch-



bishop and Bishops of the Province, or, if thought advisable, of both Provinces, in exactly the same form as the House of Lords now consults the judges of the land upon specific questions put to them for their opinion.

To that an amendment was moved by the EARL OF DEVON, and seconded by the BISHOP OF OXFORD—

That if, and so often as, in the hearing of any appeal by the said Court, any question arises affecting the doctrine or ritual of the Church of England, it shall be lawful for such Court, and they are hereby required to refer such question of doctrine or ritual for their opinion to the Archbishops and Bishops of the Church of England in manner herein-after provided, and the opinion of such Archbishops and Bishops upon such question, when duly certified to the said Court as herein-after provided, shall be taken by such Court as conclusive evidence of the doctrine and view of the Church of England upon the point submitted to such Archbishops and Bishops, and shall be adopted and acted upon by such Court so far as may be necessary for the purposes of such appeal.

*Ayes 4, Noes 9, Lost.*

The original motion was then put.

*Ayes 16, Noes 0, Carried.*

It was moved by the DEAN OF PETERBOROUGH—

That the following words be added,—

“They may also, if they think proper, consult the Professors in Theology in the Universities of Oxford and Cambridge.”

*The motion not being seconded dropped.*

It was moved by SIR R. A. CROSS, and seconded by MR. WHITBREAD—

That the following words be added, “and shall be bound so to consult them on the demand of any one or more of their number present at the hearing of the appeal.”

*Ayes 16, Noes 0, Carried.*

It was moved by SIR R. A. CROSS, and seconded by LORD COLERIDGE—

That in cases of heresy and breach of ritual the judges shall not be bound to state reasons for their decision, but if they do so each judge shall deliver his judgment separately as in the Supreme Court of Judicature and the House of Lords.

*Ayes 13, Noes 0, Carried.*

It was moved by SIR R. A. CROSS, and seconded by the REV. A. C. AINSLIE—

That the following words be added, “And the actual decree shall be alone of binding authority; the reasoning of the written or oral judgments shall always be allowed to be reconsidered and disputed.”

*Ayes 15, Noes 0, Carried.*

It was moved by the REV. A. C. AINSLIE, and seconded by LORD COLERIDGE.

That when on appeal to the Crown the judgment of the Church Court is to be varied, the cause shall be remitted to the court the judgment of which is appealed against, in order that justice may be done therein according to the order of the Crown.

*Ayes 13, Noes 0, Carried.*

## SIXTY-FIRST MEETING.

FRIDAY, APRIL 6TH, 1883.

The Secretary laid on the table copies of the Church Association Intelligencer from J. Girdlestone, Esq., and of a paper by L. T. Dibdin, Esq., on the Great Statute of Appeals. He was directed to thank the donors.

It was moved by SIR R. A. CROSS, and seconded by CANON STUBBS—

That after the first six resolutions as to appeals to the Crown there be added the words, “The Commissioners desire it to be understood that they regard the scheme embodied in the foregoing resolutions as to appeals to the Crown as a whole.”

*Ayes 12, Noes 0, Carried.*

It was moved by LORD COLERIDGE, and seconded by DR. DEANE—

That the pleading and procedure in all the courts in contentious cases should follow as near as may be the practice and procedure of the Supreme Court of Judicature in civil cases.

That all practice and procedure in contentious or non-contentious cases shall be defined by rules and orders to be drawn up in the manner (*mutatis mutandis*) prescribed by 37 & 38 Vict. c. 85. sec 19.

*Ayes 14, Noes 0, Carried.*

On the motion of the ARCHBISHOP OF CANTERBURY, DR. DEANE and MR. A. CHARLES were requested to prepare a scheme as to Faculties.

It was moved by LORD COLERIDGE, and seconded by MR. A. CHARLES—

That all appeals shall be by way of rehearing of the matters appealed against.

*Carried.*

It was moved by the REV. A. C. AINSLIE, and seconded by CANON STUBBS—

That sentence of suspension, deprivation, deposition from the ministry, or excommunication shall be pronounced when awarded, by the Bishop of the Diocese in the Diocesan Court, and by the Archbishop in the Provincial Court.

In case of the inability of a Bishop to pronounce such sentence, he shall appoint one of his com-provincial bishops to act in his place. In the case of mental malady of the Bishop the nomination shall rest with the Archbishop of the Province, save in cases where a coadjutor bishop shall have been appointed under the Act of 1869, in which cases the coadjutor shall have the same powers as the Bishop.

In case the Archbishop shall be unable to pronounce such sentence it shall be pronounced in the Provincial Court of Canterbury by the Bishop of London, the Bishop of Winchester, or the senior Bishop of the Province of Canterbury, and in the Provincial Court of York by the Bishop of Durham or the senior Bishop of the Province of York. Seniority to be reckoned from the date of consecration.

*Carried.*

It was moved by SIR R. A. CROSS, and seconded by MR. WHITBREAD—

That the sentence of the Court shall be recorded in the Registry of the Diocese, and shall not be published on the church doors, as at present.

*Carried.*

It was moved by MR. A. CHARLES, and seconded by DR. DEANE—

That in cases of misconduct and neglect of duty every suit or proceeding against any clerk in holy orders for any offence against the laws ecclesiastical shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards: Provided always, that whenever any such suit or proceeding shall be brought in respect of an offence for which a conviction shall have been obtained in any court of common law, such suit or proceeding may be brought against the person convicted at any time within six calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence in respect of which such suit or proceeding shall be so brought.

*Carried.*

It was moved by MR. A. CHARLES, and seconded by SIR W. C. JAMES—

That the period of limitation within which the representation must be made in cases of heresy and breach of ritual shall be one year.

*Carried.*

It was moved by the BISHOP OF OXFORD, and seconded by SIR R. A. CROSS—

That if in any trial before a temporal court the verdict of a jury and judgment thereon has established the guilt of a clerk as to any act which is charged against him, and which would be an offence against the laws ecclesiastical, and if the record of any such trial, or an office copy thereof be given in evidence in an ecclesiastical court, the same shall be conclusive evidence



as to the matter which was in issue between the parties in such trial, and the Court may thereupon proceed to give judgment against the said clerk, and he shall be allowed to give evidence of any extenuating circumstances in mitigation of punishment, and power shall be given to the Court to require the production of such record or office copy.

*Carried.*

It was moved by MR. A. CHARLES, and seconded by the BISHOP OF OXFORD—

That the officer who has the custody of the records of any court of common law, shall, upon the conviction of a clerk for any offence, whether cognisable by an ecclesiastical court or otherwise, send a copy of the record of such conviction to the Bishop of the Diocese within which the clerk was tried and convicted, and the said record shall be preserved in the Registry of the Diocese.

*Carried.*

It was moved by MR. A. CHARLES, and seconded by DR. DEANE—

That the Diocesan and the Provincial Court shall have power to make binding orders as to costs.

*Carried.*

It was moved by the DEAN OF PETERBOROUGH, and seconded by SIR W. C. JAMES—

That in cases of misconduct and neglect of duty the costs of a complainant appointed by a Bishop in a proper case should be defrayed from some public source.

*Carried.*

It was moved by the DEAN OF PETERBOROUGH, and seconded by CANON STUBBS—

That whether a case be proper for prosecution should, for this purpose, be determined by the certificate of the Vicar General of the Province on the initiation of the proceedings.

*Ayes 8, Noes 1, Carried.*

It was moved by CANON WESTCOTT, and seconded by MR. A. CHARLES—

That in drafting the Report it be pointed out that the function of the judges appointed to hear appeals to the Crown is not to determine the doctrine or ritual of the Church of England, but to determine whether certain opinions or practices are in such a sense in conflict with the authoritative formularies of the Church as to require correction or punishment.

*Ayes 7, Noes 1, Carried.*

The Secretary was directed to add as Appendices to the Report—

- (a.) Extracts from the Reports of the Ecclesiastical Courts Commission of 1832, to be selected by the Rev. A. C. Ainslie and himself.
- (b.) A selection from the Statutes considered by the Commissioners, the selection to be made by Canon Stubbs and Mr. A. Charles.
- (c.) The Introduction and Appendix pp. (iii.—xxxi.) to the "Return of all Appeals in causes of Doctrine or Discipline made to the High Court of Delegates, from its erection by 25th Henry the VIII. cap. 19, A.D. 1533, until its abolition by the 2nd and 3rd William 4th, c. 92, A.D. 1832," made in 1868 [No. 199].

The Archbishop of Canterbury having been called away during the meeting, the Chair was taken successively by the MARQUIS OF BATH, the EARL OF DEVON, and the BISHOP OF OXFORD.

## SIXTY-SECOND MEETING.

THURSDAY, APRIL 12TH, 1883.

THE PRESIDENT read the following letter which was ordered to be entered on the Minutes.

Lambeth Palace,

April 12th, 1883.

MY DEAR LORD ARCHBISHOP,  
ON behalf of the family of the late Archbishop of Canterbury, I beg leave to thank your Grace, and through you the members of the Royal Commission on Ecclesiastical Courts, for the kind resolutions which you have been good enough to convey to us. I can speak

from personal knowledge of the deep interest taken by the Archbishop in all the deliberations of the Commission, and of the high hopes he entertained respecting its issue.

The resolution you have transmitted to us will be much valued by his family, and we unite in returning you our cordial thanks.

I have, &c.

His Grace,

RANDALL T. DAVIDSON.

The Lord Archbishop of Canterbury.

It was moved by the BISHOP OF OXFORD, and seconded by MR. A. CHARLES—

That to the resolutions as to Appeals to the Crown, there be added as the third resolution the words—

"The number of judges summoned for each case shall not be less than five, who shall be summoned by the Lord Chancellor in rotation," and that the words "six" in the said resolutions be altered to "seven."

*Carried.*

It was moved by SIR R. A. CROSS, and seconded by the REV. A. C. AINSLIE—

That an Appeal shall lie from the Diocesan Court to the Court of the Province.

*Carried.*

It was moved by the REV. CHANCELLOR ESPIN, and seconded by the DEAN OF PETERBOROUGH—

That if a case comes before the Court of First Instance, and is decided there, the Archbishop (or his Official Principal) may on the case coming up before the Provincial Court, and with the consent of both parties, send the case direct to the Crown.

*Ayes 4, Noes 7. Lost.*

It was moved by DR. DEANE, and seconded by the REV. CHANCELLOR ESPIN—

That it is desirable that in Faculty cases a uniform practice be adopted in all Diocesan Courts.

*Carried.*

## SIXTY-THIRD MEETING.

FRIDAY, APRIL 13TH, 1883.

The Secretary laid on the table copies of the opinion of Sir W. Erle, in the case of *Martin v. Mackonochie*, presented by the Secretary of the English Church Union, at the request of Mr. Perry. He was directed to thank the donors.

The Commissioners discussed and settled a list of questions to be considered.

The REV. CHANCELLOR ESPIN and MR. F. H. JEUNE were requested to prepare some suggestions as to the transfer of business now done by Commissioners to the Diocesan Courts.

It was moved by MR. F. H. JEUNE, and seconded by SIR R. A. CROSS—

That only the changes proposed as to Appeals to the Crown should be applied to the Channel Islands.

*Carried.*

It was moved and seconded by the same—

That only the changes proposed as to Appeals to the Crown and as to the Provincial Courts should be applied to the Isle of Man.

*Carried.*

It was moved by MR. F. H. JEUNE and seconded by DR. DEANE—

That the Church Discipline Act (3 & 4 Vict. c. 86) and the Public Worship Regulation Act (37 & 38 Vict. c. 85), and other enactments inconsistent with the constitution of the Ecclesiastical Courts proposed should be repealed.

*Carried.*

It was moved by MR. F. H. JEUNE, and seconded by the REV. CHANCELLOR ESPIN—

That payment of costs in the Ecclesiastical Courts should be enforceable by an order of the Court for sequestration.

*Carried.*



It was moved by the REV. A. C. AINSLIE—

That an Appeal to the Crown should be allowed only to the defendant.

*The motion, not being seconded, dropped.*

It was moved by the REV. CANON WESTCOTT—

That in cases of misconduct and neglect of duty the number of trials shall be limited to two.

That an Appeal shall lie from the Diocesan Court to the Provincial Court or the Crown at the option of the appellant, or if the case be brought before the Provincial Court in the first instance, the Appeal shall lie to the Crown.

*The motion, not being seconded, dropped.*

It was moved by the REV. CHANCELLOR ESPIN, and seconded by MR. F. H. JEUNE—

That in every case in which, from the nature of the offence charged, it shall appear to any Bishop within whose diocese the party accused may hold any preferment that great scandal is likely to arise from the party accused continuing to perform the services of the Church while such charge is under investigation, or that his ministration will be useless while such charge is pending, it shall be lawful for the Bishop, so soon as a citation is issued from the Diocesan Registry, or at any time pending any proceedings before the Bishop or in any Ecclesiastical Court, to cause a notice to be served on such party inhibiting the said party from performing any services of the Church within such diocese, from and after the expiration of fourteen days from the service of such notice and until sentence shall have been given in the said cause.

Provided that it shall be lawful for such party, being the incumbent of a benefice, within 14 days after the service of the said notice, to nominate to the Bishop any fit person or persons to perform all such services of the Church during the period in which such party shall be so inhibited as aforesaid; and if the Bishop shall deem the person or persons so nominated fit for the performance of such services he shall grant his licence to him or them accordingly, or in case a fit person shall not be nominated the Bishop shall make such provision for the services of the Church as to him shall deem necessary; and in all such cases it shall be lawful for the Bishop to assign such stipend not exceeding the stipend required by law for the curacy of the church belonging to the said party, not exceeding a moiety of the net annual income of the benefice as the said Bishop may think fit, and to provide for the payment of such stipend, if necessary, by sequestration of the living. Provided also that it shall be lawful for the said Bishop at any time to revoke such inhibition and licence respectively.

To that an amendment was moved by the EARL OF DEVON, and seconded by DR. DEANE—

That the words "or that his ministration will be useless while such charge is pending" be omitted.

The consideration of the motion and amendment were adjourned.

#### SIXTY-FOURTH MEETING.

THURSDAY, APRIL 19TH, 1883.

The discussion of the motion of the REV. CHANCELLOR ESPIN and the amendment of the EARL OF DEVON was resumed.

A further amendment was moved by the MARQUIS OF BATH, and seconded by the DEAN OF DURHAM—

That after the words "in every case" there be inserted the words "of misconduct and neglect of duty."

*Ayes 13, Noes 0, Carried.*

The amendment of the EARL OF DEVON was by leave withdrawn, and in place thereof it was moved by the EARL OF DEVON, and seconded by the ARCHBISHOP OF YORK—

That for the words "or that his ministration be, &c.," there be substituted the words "so that his ministration be, &c."

*Ayes 14, Noes 0, Carried.*

A further amendment was moved by the REV. A. C. AINSLIE, and seconded by the DEAN OF DURHAM—

That for the words "useless" there be substituted the word "mischievous."

*Ayes 5, Noes 6, Lost.*

A further amendment was moved by SIR W. C. JAMES, and seconded by the BISHOP OF WINCHESTER—

That for the word "useless" there be substituted the words "injurious to the cause of religion."

*Ayes 11, Noes 1, Carried.*

A further amendment was moved by the ARCHBISHOP OF YORK, and seconded by the EARL OF DEVON—

That the words "while such charge is under investigation" be omitted.

*Carried.*

A further amendment was moved by MR. S. WHITBREAD, and seconded by CANON STUBBS—

That for the words "the Bishop shall make such provision, &c.," there be substituted the words "the Bishop may make such provision, &c.," and that all after the word "necessary" be omitted.

*Ayes 4, Noes 7, Lost.*

A further amendment was moved by the REV. A. C. AINSLIE, and seconded by SIR R. A. CROSS—

That for the word "party," wherever it occurs, there be substituted the word "clerk."

*Carried.*

A further amendment was moved by the REV. A. C. AINSLIE, and seconded by MR. S. WHITBREAD—

That the motion be recast so that the Bishop's power to assign a stipend should not commence until after trial in the Diocesan Court, or if the case has been sent to the Provincial Court after trial in the Provincial Court.

*Ayes 6, Noes 12, Lost.*

The motion as amended was then put.

*Ayes 12, Noes 0, Carried.*

The Commissioners considered Punishments and Disobedience to the orders of Ecclesiastical Courts.

#### SIXTY-FIFTH MEETING.

FRIDAY, APRIL 20TH, 1883.

The Commissioners resumed the discussion of Punishments and Disobedience to the orders of Ecclesiastical Courts.

The discussion was adjourned to Friday, April 27th.

It was moved by the REV. CHANCELLOR ESPIN, and seconded by the ARCHBISHOP OF YORK—

That DR. DEANE, MR. CHARLES, and MR. JEUNE be requested to draft that portion of the Report which shall deal with the powers of the Ecclesiastical Courts as regards witnesses, production of documents, costs, venue, place of sitting, rules of practice, duplex querela, and other like matters having regard to the resolutions adopted by the Commissioners thereon.

*Carried.*

#### SIXTY-SIXTH MEETING.

THURSDAY, APRIL 26TH, 1883.

It was moved by SIR R. A. CROSS, and seconded by CANON STUBBS—

That the Minutes of Proceedings be added as an Appendix to the Report.

*Ayes 11, Noes 0, Carried.*

It was moved by SIR W. C. JAMES, and seconded by the REV. CHANCELLOR ESPIN—

That the words "crime, immorality, or neglect of duty," be substituted for the words "misconduct or neglect of duty," whenever the latter occur in the Resolutions of the Commission.

To that an amendment was moved by the REV. A. C. AINSLIE that for the words "crime, immorality, or neg-



“lect of duty,” there be substituted the words “offences against the laws ecclesiastical in matters other than doctrine and ritual.”

*The amendment, not being seconded, dropped.*

The motion was then put.

*Ayes 2, Noes 10, Lost.*

The Commissioners discussed the Trial of Bishops.

The discussion was adjourned.

## SIXTY-SEVENTH MEETING.

FRIDAY, APRIL 27TH, 1883.

On the application of the Secretary, it was ordered—

That in printing the Minutes of Proceedings formal entries be omitted and unimportant ones abbreviated.

It was moved by the BISHOP OF WINCHESTER, and seconded by SIR W. C. JAMES—

That the Court for the trial of a diocesan Bishop shall be thus constituted:—The Archbishop of the Province in which the diocese of the said Bishop shall be situate shall summon a Court for the trial of the said Bishop, to consist of the Archbishop himself and his comprovincial Bishops, who shall proceed to hear the case, with the Official Principal of the Province and one other person learned in the law, being either a Judge of the Supreme Court of Judicature, or a barrister of not less than 10 years’ standing, as assessors.

In the case of an Archbishop, the case shall be heard by all the Bishops of the Province, with two assessors learned in the law, qualified as aforesaid.

From the decision of the Courts so constituted no appeal shall lie, except to the Sovereign, as in other cases.

To that an amendment was moved by LORD COLERIDGE, and seconded by SIR R. A. CROSS—

That it is desirable that any scheme of ecclesiastical courts and discipline should make provision for the trial of offences, if committed by Bishops or Archbishops, and for compelling on their part obedience to the law; but on a consideration of the language of Her Majesty’s Commission, it does not appear that this subject is properly within its scope, and on this ground only it seems improper to deal with the subject in the Report.

*Ayes 18, Noes 0, Carried.*

*The original motion was therefore lost.*

It was moved by CANON STUBBS, and seconded by SIR R. A. CROSS—

That the following words be added to the resolution just carried—

“The Commissioners think it very questionable whether the past history of the Church of England affords any material which could be satisfactorily used to furnish precedent or principle for such a proceeding.”

“They desire, however, to record their opinion that in the history of the early Christian Church would be found both principle and precedent for a provision that such changes and complaints should be tried by a tribunal of the comprovincial Bishops.”

*Ayes 18, Noes 0, Carried.*

The Commissioners resumed the discussion of Punishments and Disobedience to the orders of Ecclesiastical Courts.

The discussion was adjourned.

It was moved by the REV. CHANCELLOR ESPIN, and seconded by SIR W. C. JAMES—

That the Bishops be empowered to transfer at their discretion to their Diocesan Courts the following business, viz., that of—

Commissions under the Benefices Resignation Act.  
Commissions of inquiry with a view to augmentation of benefices.

Appeals under the Dilapidations Act.

Arrangements for constituting new parishes, and for altering boundaries of existing parishes.  
Inhibitions.

Changes in arrangements set out in deed of consecration of Churches.

Assent to alterations and additions to parsonage houses.

R 8592.

Also that the Diocesan Court be empowered to fix fees for marriages, burials, &c. in ancient parishes, as the Chancellor of the diocese is already authorised to do for new parishes by the New Parishes Act of 1843, s. 15.

Also that the same Court try questions about the validity of the election of churchwardens as a Court of First Instance.

*Ayes 2, Noes 11, Lost.*

It was moved by the ARCHBISHOP OF YORK and seconded by MR. WHITEHEAD—

That the following be a Committee to draft the Report—

The Archbishop of Canterbury.

Lord Blackford.

Lord Coleridge.

Sir R. A. Cross.

Canon Westcott.

Canon Stubbs.

Mr. E. A. Freeman.

Mr. A. Charles.

Mr. F. H. Jeune.

*Ayes 9, Noes 0, Carried.*

## SIXTY-EIGHTH MEETING.

THURSDAY, MAY 24TH, 1883.

The Commissioners discussed various miscellaneous matters.

It was moved by the BISHOP OF OXFORD, and seconded by the EARL OF DEVON,—

That in the opinion of the Commissioners the Report should state that they have thought it right to pay very careful attention to the Resolutions of the Lower House of the Convocation of Canterbury, formally communicated to them by the late Archbishop of Canterbury. (See Vol. II., p. 399, Appendix C.)

*Ayes 14, Noes 0, Carried.*

## SIXTY-NINTH MEETING.

FRIDAY, MAY 25TH, 1883.

It was moved by the REV. A. C. AINSLIE, and seconded by the REV. CHANCELLOR ESPIN—

That the ancient custom of confirmation of the appointment of the Official Principal by the Dean and Chapter of the Metropolitan Cathedral Church should be retained.

*Ayes 10, Noes 4, Carried.*

It was moved by LORD COLERIDGE, and seconded by MR. JEUNE—

That imprisonment for refusal on the part of a clerk to obey the order of an Ecclesiastical Court should be abolished, and refusal to obey an order of Court on the part of a clerk should be punished in the first instance by suspension for a certain term.

If at the close of the said sentence he shall still refuse to obey the original order he should be liable to a further sentence of suspension; and if at the close of this second sentence of suspension he shall still refuse, he shall then be liable to be suspended until such time as the Court shall be satisfied of his obedience, or, if he be beneficed and the case should require it, to be deprived by summary process.

If the clerk, being beneficed, shall disobey the sentence of suspension he should after three months notice be liable to be deprived of his benefice by summary process.

If any clerk during suspension or inhibition by an ecclesiastical court, or after deprivation, attempts to perform divine service in a church to which the suspension, inhibition, or deprivation is applicable, he should be treated as a disturber of public worship. (See 23 & 24 Vict. c. 32.)

*Ayes 7, Noes 0, Carried.*

It was moved by MR. JEUNE, and seconded by LORD COLERIDGE—

That it should not be lawful to move for a writ of prohibition to an ecclesiastical court until after the subject matter of the motion shall have been brought before the ecclesiastical court itself.

*Ayes 13, Noes 0, Carried.*



## SEVENTIETH MEETING.

THURSDAY, JUNE 28TH, 1883.

The Secretary reported that it had been thought desirable by the Draft Report Committee to obtain information as to the tenure of temporalities in France by ecclesiastics, under the Concordat, that he had in consequence communicated with the Foreign Office, and had been furnished with a number of replies to questions on the matter, which replies had been framed by M. Treitt, the legal adviser of Her Majesty's Embassy in Paris. The replies were ordered to be printed and the Secretary was directed to convey the thanks of the Commissioners to Earl Granville.

The ARCHBISHOP of CANTERBURY presented the Draft Report as framed by the Committee appointed for the purpose.

The Commissioners considered and amended the Draft Report.

It was moved by the BISHOP of OXFORD and seconded by the REV. CHANCELLOR ESPIN—

That clauses be added to the Report as to Visitation Courts and matters connected therewith.

*Carried.*

In the course of the Meeting the Archbishop of Canterbury being called away, the Chair was taken by SIR R. A. CROSS.

## SEVENTY-FIRST MEETING.

FRIDAY, JUNE 29TH, 1883.

The Commissioners considered and amended the Draft Report.

In the course of the Meeting the Archbishop of Canterbury being called away, the Chair was taken by the EARL OF CHICHESTER.

## SEVENTY-SECOND MEETING.

THURSDAY, JULY 5TH, 1883.

The Commissioners considered and amended the Draft Report.

The Secretary submitted a proposed Table of Contents of the Blue Books containing the Report and Appendices. The Table of Contents was approved, and the matters therein referred to were ordered to be inserted in the Blue Books.

The Secretary laid on the table copies of the Church Association Intelligence, supplied for the use of the Commissioners by J. Girdlestone, Esq.

In the course of the Meeting, the Archbishop of Canterbury being called away, the Chair was taken by SIR R. A. CROSS.

## SEVENTY-THIRD MEETING.

FRIDAY, JULY 6TH, 1883.

The Commissioners considered and amended the Draft Report.

## SEVENTY-FOURTH MEETING.

THURSDAY, JULY 13TH, 1883.

The Commissioners considered and amended the Draft Report.

## SEVENTY-FIFTH MEETING.

FRIDAY, JULY 13TH, 1883.

The Secretary laid on the table copies of a pamphlet entitled "My Prosecution," furnished for the use of the Commissioners by the author, the Rev. R. W. Enraght.

On the motion of CANON STUBBS it was *ordered*—

That the preamble of the Statute of Appeals as given in the draft Bill preserved among the Cotton MSS. in the British Museum, for a copy of which preamble the Commissioners were indebted to L. T. Dibdin, Esq., be inserted in a foot note to the reprint of the Statute in Historical Appendix XII.

The Commissioners considered and amended the Draft Report.

The Commissioners concluded their labours.

It was moved by the MARQUIS OF BATH and *carried unanimously*—

That the Commissioners desire to record their sense of the wisdom, tact, and moderation with which his Grace the Archbishop of Canterbury has brought their deliberations to a successful issue.

It was moved by the EARL OF DEVON and *carried unanimously*—

That the Commissioners desire to express their thanks to their Secretary for the unwearied zeal, diligence, and courtesy with which he has furthered the work of the Commission.

The proceedings of the Commission then terminated.



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### HISTORICAL APPENDIX (I.).

#### An Account of the Courts which have exercised Ecclesiastical Jurisdiction in England :

- (a.) Before the Norman Conquest,
- (b.) From the Norman Conquest to the Reformation,
- (c.) From the Reformation to the year 1832;

prepared as materials for the Historical Section of the Report of the Commissioners. By Canon Stubbs, D.D.

THIS Commission is directed to inquire into and report upon the constitution and working of the ecclesiastical courts as created or modified under the Reformation Statutes of the 24th and 25th years of King Henry VIII. and any subsequent Acts.

The only ecclesiastical courts which can in any sense be said to have been created by those or any subsequent statutes are the High Court of Delegates, for which in 1832 by (2 & 3 Will. 4. c. 92.) the Judicial Committee of Privy Council was substituted; the Court of High Commission, and the court framed by the Church Discipline Act of 1840 (3 & 4 Vict. c. 86.). But the modifications which have been introduced during the corresponding period have been such as, in one way or another, to affect the whole existing fabric of ecclesiastical judicature; some, as, for instance, the great Reformation Statutes, affecting the questions of the source and nature of jurisdiction and the character of the law administered, whilst others, as, for instance, the Act of Elizabeth (5 Eliz. c. 23.) for the due execution of the writ *de excommunicato capiendo*, and the 53 Geo. III. c. 27. creating the writ *de contumace capiendo*, materially affect the character of the procedure by which the sentences of

each and every of the ecclesiastical courts could be enforced.

The scope, therefore, of the inquiry of the Commission becomes very extensive, and is found to include the whole of the machinery of ecclesiastical jurisdiction, in the history of its origin and working.

It would be possible to attempt this task by making the statutes of 24 & 25 Henry VIII. the starting points of our inquiry, and only referring to earlier history in order to explain, when necessary, the terms of those statutes, or the express changes in the working of the earlier system which were introduced by the successive stages of later legislation. But I have been induced to adopt a more comprehensive plan of examination, and to attempt, at least in outline, a more complete survey of the subject, by the following considerations:—

1. The fact that the existing fabric of ecclesiastical judicature, whatever were the modifications which were made at the Reformation, owes its existence and its form to causes operative long before the Reformation, and is historically identical with the System which from the 11th century onwards was



worked by the same methods, from the sixth century onwards on the same principles, and from the foundation of the church in faith in the same authority.

2. The extreme importance of placing our conclusions before the Crown in language of clear and definite import, bearing a distinct relation to the historical development of the subject, and with careful limitation of the terms used, and of the principles and outline of action to be recommended.
3. The fact that, in the evidence taken by the Commission, on the historical bearings of the subject, there has been a considerable conflict of opinion as to matters of fact, between the representatives of different schools of thought, and considerable inconsistencies in the view of historical points taken by representatives of the same school of opinion.
4. The great importance, as it would appear, of obtaining such a statement of the material points of the history of the subject as shall enable us to determine the true limits of ecclesiastical and secular jurisdiction, as they have been exemplified in the experience of the English church and nation; of ascertaining the course of events by which ecclesiastical jurisdiction has been developed and modified, and of realising the continuity of religious and historical principle on which, in the case of any future modification of the existing system, it will be necessary to proceed.

I beg leave first of all to submit to the Commissioners the consideration that in the theory of ecclesiastical judicature in national churches there are three principles involved:—

1. The existence of a law anterior to and independent of the national secular law.
2. The acceptance by the nation of that anterior law as the law of religion.
3. The annexation by the nation, to the sentences of the law so accepted, of the coercive power by which alone the sentences can be enforced on the unwilling.

Historically these three principles may be more fully stated thus:—

1. There is in the church of Christ an organised system of belief, morals, and internal self-government, common in every material point to the whole body of Christians, and, whether viewed as a system of divine authority or of consensual mechanism, an integral part of primitive historical Christianity.
2. The ecclesiastical system, that is the historical system of Christianity, was accepted by the several tribes or kingdoms into which at the time of the conversion the English nation was distributed, in the form, as touching faith, law and organisation, generally accepted by the western churches then existing.
3. There was added to this acceptance a recognition of the jurisdiction of ecclesiastical judicature, which when first accepted possessed only a consensual or moral authority, as a part of the national polity;—a recognition which in the earliest days of the English church was possibly made operative by allowing to ecclesiastical judges a direct executive and coercive power, but which since the days of the Norman Conquest has involved an application by the spiritual to the secular arm for the enforcing of spiritual censures.

If due weight be allowed to these considerations it will be seen that three principles are working together in the present state of things:—

1. There is a law which is assumed to be of divine origin and at all events is common to historical Christendom.
2. There is a national acceptance and recognition which might work through voluntary obedience and the use of simply spiritual authority; but which
3. At the present goes further and places certain machinery of the national executive at the disposal of ecclesiastical judges, with due safeguards against misuse.

The main points to be illustrated in the several periods before us may be arranged under the following heads:—

1. The nature of the law administered.
2. The constitution of the courts, as to the authority which originated them and their personal organisation.
3. The nature of the procedure in the courts and of the means by which their decisions were carried into effect.

## I. BEFORE THE NORMAN CONQUEST.

This period would naturally divide itself into three sections: an earlier one during which the Christian church was acting either as a missionary body or as a purely voluntary association; a second during which it was received as the national religion in the several kingdoms into which England was divided, and possessed a constitutional unity simply by virtue of its spiritual organisation; and a third during which it was the recognised religious system of the united nation.

During the first of these periods it is obvious that the entire authority of the church, so far as it could be said to exist, was external to the State so far as it could be said to exist; during the second, the consolidated machinery and central authority was external to the several States, although in its complete area it coincided with the collective area of the nationality; and in the third there was such a union of church and State as is consistent with the joint action of two bodies of different origin and history working together for most civil and religious ends.

### 1. AS TO THE LAW ADMINISTERED IN THE ANGLO-SAXON COURTS OF THE CHURCH.

The ecclesiastical law of the Anglo-Saxons may be viewed in analogy with the secular law: as written law modified on the one hand by custom, and on the other by the authority which on all ancient systems was regarded as existing in the mouth of the judge. Of the written secular laws the most ancient are either records of customary penalties, or else the general enunciations of moral teaching, which owe any external sanction that the law gives them to the character and authority of the legislator. Of the ecclesiastical laws in the same way, one large portion consists of the penitentials, or manuals of penances, and directions, originally intended for the guidance of the administrators of a strictly voluntary religious organisation, and of treatises on the same subject written by experienced scholars and religious teachers. But the law of the Anglo-Saxon church was not entirely customary; for the earliest missionaries brought with them, not only the Holy Scriptures and the ritual books in which the common usages of the western church were embodied, but collections of the canons of early councils, and possibly also such a body of canons and prescriptions as had been in the sixth century collected at Rome by Dionysius Exiguus, which contained the germ and was the prototype of the subsequent collections of the canon law. To these two elements of legal material may be added the canons of the national councils held in England under the early Archbishops of Canterbury and York before the union of the kingdoms, which were received with general acceptance in England itself, and were regarded on the continent with great respect. These canons were passed at synods which, although attended by the kings and wise men of the nation, were constituted by the archbishops, bishops, and clergy. Corresponding with these on the other side were laws both secular and ecclesiastical, passed in the witenagemot by the authority of the kings and the collective body in a secular or mixed capacity. The ecclesiastical laws of the witenagemots are mainly directed to the enforcement of the ecclesiastical law already recognised and formulated; but the coexistence of bodies like the national synod and the witenagemot, consisting of the same persons associated in two different capacities in the respective assemblies, has very naturally the effect of complicating and duplicating the sanctions of particular laws.

It must be considered, however, that close and somewhat confused as the relations of church and State in the later Anglo-Saxon period became, the source of legislative authority in the church must have been always distinguished from the source of authority in the State by the fact that in its origin it lay outside the nationality, and was by the intercommunion of the catholic churches a part of a great system, which had no analogy whatever in the secular relations of the State. As a part of the catholic church, the English church was constantly drawing in elements of novelty and of growth, which, however good or mischievous they may now seem, became part of its constitution by reason of its organic connexion with foreign churches. Its body of canons (which, whatever was their legal value, was the body of scientific or customary church law) was thus increased from time to time by the incorporation of the acts of general councils, of authoritative foreign synods, and of occasional papal responses to questions referred by bishops and kings to the authority of Rome.

The law administered in the Anglo-Saxon church was then a body of canonical written law containing the Holy Scriptures, the creeds, the canons of general councils and



of the national councils of the church; assisted in application by the less authoritative manuals of the penitentials, by the less authoritative collections of foreign councils, and by the coincident support in some particulars of the ecclesiastical enactments of the kings.

## 2. THE COURTS OF THE ANGLO-SAXON CHURCH.

The materials for the history of actual litigation in the Anglo-Saxon church are extremely small, and the only means of elucidating it are the selection of minute particulars found in the laws and chronicles of the time.

It is, however, clear—

1. That, as was universally the case in the church, the jurisdiction of the bishop was recognised as the authority (1) of the chief pastor of the diocese; (2) as the protector of the clergy; and (3) as the proper arbitrator in disputes which did not admit or require legal decision.
2. That the metropolitan authority of the archbishop was recognised by the bishops, and, both during the Heptarchic period and under the United Kingdom, by the kings and witenagemots.
3. That the prevalence of the monastic system and the great importance attached to the office and character of abbots, with the exemption which many monasteries enjoyed from episcopal superintendence, had the effect of creating peculiar jurisdictions for the abbeyes, in which both ecclesiastically and secularly the abbot occupied the place constitutionally belonging to the bishop.
4. That there were provincial synods in which questions of greater importance were settled and which consisted of archbishops, bishops, abbots, and other clergy, and were occasionally attended by kings and lay lords.
5. That ecclesiastical suits were heard and decided in the moots or public assemblies of the shire and hundred, which were held at fixed times and places, or by special summons in special cases, and in which the bishop and ealdorman are said to have expounded the divine and secular law.

In relation to this part of the subject it is of importance to point out that the fact that ecclesiastical suits were decided in the shire moots, a fact which is proved both by the injunctions of the Anglo-Saxon laws and by the enactment by which William the Conqueror introduced an important change into the method of judicature, requires to be supplemented by the consideration of what the shire and hundred moot was. It was not in itself what in modern language would be termed a court of justice, but a general assembly of the men of the shire, who possessed the right or were bound to the service of attendance, out of whom were selected the persons who discharged the functions required for the judicial and financial business. The nature of the procedure in these popular courts was in secular matters so far removed from modern practice as to furnish no exact analogies; it is, however, believed by our ablest investigators that the decision of all disputed questions was by compurgation and ordeal, or in certain cases, by special permission of the king or chief magistrate, by the evidence of witnesses. The component members of the regulating body, were, like the Scabini of continental tribunals, assessors of the presiding officer, sheriff, or ealdorman; but their functions comprised little more than the definition of the point to be decided by the oaths of the compurgators, or the ordeal, or witness, as the case might be. In some analogy with the Roman law it may be said that the proceedings of the tribunal were *in jure*, as preceding the *litis contestatio* (or definition of the point to be tried), but the decision *in judicio* was in the hands of the suitors of the court. The function of the ealdorman and bishop, of expounding the law in such cases, would only be the securing of the perfect carrying out of the customary forms of charge, defence, challenge, and compurgation, and the reporting of the legal penalties ensuing on the practical decision.

If this were the case, and it would seem clear that in all matters touching the civil rights of laymen and clergy alike it was the practice, it is easy to see that great confusion as to ecclesiastical trials might easily creep in, and that in cases of a mixed character there might be many conflicts between the episcopal laws and the common or customary laws of the people. But it would be wrong to infer from the words of the laws that there was any confusion between the legal authority of the bishop over the clergy and that of the ealdorman or sheriff; or between the episcopal court

and the shire moot. The episcopal jurisdiction might be exercised as well in the shire moot as outside of it, and the bishop's position, as guardian of the interests of the clergy and of the property of the churches, was always fully recognised.

It is impossible, however, to come to any minute conclusions as to the nature of the suits ecclesiastical which were adjudicated in the shire moot without more information than we now have as to the difference of treatment in different sorts of suits, *e.g.*, in case of a criminal charge against a priest, or of a disputed piece of preferment, or the non-discharge of ecclesiastical dues, or, to state it more broadly, in relation to persons, things, rights and wrongs. And this is not forthcoming.

Whether under the Anglo-Saxon law there was any appeal properly so called from the decision of an inferior court to a superior court is a moot point. It is possible that a suit might be, before it began to be tried, removed by special writ to a superior court, as was the case in Norman times; and it is impossible to doubt that there must have been conflicts of jurisdiction occasionally arising where the limits of districts were ill defined and the rights of lords ill ascertained. But there was no proper provision for appeal in the secular laws; the prohibition that a suitor might not carry his cause to a superior court until he had failed to obtain justice in the court of first instance, probably relates to cases in which, by the failure of compurgation and ordeal, the court of first instance had been unable to arrive at a decision, or where there had been other occasions of delay.

In secular judicature then, so far as I can discover, there was no provision for appeal in adjudicated cases, beyond the ordinary resource of attacking the members of the tribunal which had determined the case, *i.e.*, initiating a new suit against the former judges.

In the ecclesiastical judicature, on this analogy of the popular law, there probably was no regular system of appeal, but, as the practice of foreign churches admitted appeals to the metropolitan and even to the Pope, it is possible that such appeals were in England occasionally carried to the archbishop or to the provincial synod. But of this there is a deficiency of evidence; the recorded cases of litigation in provincial synods being generally suits between churches in different dioceses, or involving interests too great to be disposed of in diocesan synods or shire moots. Of appeals to Rome, in the form which appeal ultimately took in England, there are no instances; the few applications to that see, which occur in the early days of English Christianity, having no permanent result in legal history.

Recourse was indeed had to Rome in the disputes between Wilfrid, Archbishop Theodore, and the Kings of Northumbria in the seventh century, and by the archbishops of Canterbury in their disputes with the Kings of Kent and Mercia in the ninth; but these and the rare examples of later reigns are not so much of the character of legal proceedings as of political negotiations, and, whatever bearing they have on the position of the Pope as supreme authority in ecclesiastical matters, they have only a very incidental bearing on the subject before us. They do however, illustrate the point which has been suggested above, that the Church of England was not, even in Anglo-Saxon times, merely the religious organisation of the nation but a portion of a much greater organisation; the exact limits of its relations to the foreign churches were possibly disputable, but the fact of the incorporation was admitted on all sides.

## 3. PROCEDURE IN CHURCH COURTS BEFORE THE NORMAN CONQUEST.

The subject of procedure under the Anglo-Saxon law has been to some extent discussed in the preceding section, but some important points remain to be stated.

- a. If I am right in supposing that certain suits touching the conduct as well as the property of the clergy were tried in the shire moot, the fact that the bishop was there to declare the law and to occupy the position which in more modern law is assigned to the judge, would not in itself contravene the position that the procedure was of the customary popular character which has been above described; and it would seem clear from the legislative act of the Conqueror, to be noticed further on, that such causes were decided "*secundum hundredet*," that is, by the customary process of compurgation and ordeal.
- β. But it is not necessary to suppose that all episcopal judicature was carried on in the shire moot. It



would be a strange inconsistency if we supposed that that part of the bishop's jurisdiction which was worked by the penitential machinery was exercised in public, or that every dispute in which he was called on to arbitrate was brought before the assembly of the shire. Whatever may have been the case in the early days of the church, when, both as chief confessor and chief arbitrator, the bishop exercised a voluntary or consensual jurisdiction; in the later centuries the religious intercommunion with the foreign churches, and the literary and legal intercourse with the French and German churches, had the effect of assimilating some portions of the ecclesiastical jurisprudence with that of the more ancient churches. This is well ascertained from the fact that some of the longest Anglo-Saxon books of church law are translated from the Latin of the French bishops, and *vice versâ*. But it is not certain that these books possessed more than scientific and literary authority, nor have we any account of cases decided according to them. Granting, however, that this is possible, it would seem probable that, through this association, before the Norman Conquest, some elements of the ancient Roman procedure, which afterwards became universal, may have become naturalized in England; in which case it would result that, besides the customary Teutonic procedure by compurgation and ordeal, there may have been rude processes derived from the customary law of the Roman provinces, as regulated, where it was regulated at all, by the Theodosian Code.

7. But besides these considerations, we have to remark that the judicial authority of the bishop, like that of the king in still later times, was inherent in the person rather than in the court, and that accordingly, whilst in visitation, or at home, the bishop might be called on constantly to hear causes with more or less solemnity. Such cases we have mentioned already as cases of penitential or consensual jurisdiction, but there is no occasion to confine them within such limitations; the bishop "in camera" or "in itinere" possessed the full authority of his office.
8. It must be added that the Anglo-Saxon bishops, as the lords of large estates, the jurisdiction of which was separated from that of the shire moot, possessed courts of secular jurisdiction in which ordinary civil and criminal cases arising between laymen would be tried. It is very probable that in the early times confusion might arise as to the limits of the two sorts of jurisdiction, but on the analogy of the lay jurisdiction of later times, it is probable that the bishop's steward would act as president of the seigniorial courts, whilst in the ecclesiastical causes the bishop himself, or possibly towards the end of the period his archdeacon, might preside.

In forming a conclusion on this point, it is only necessary to note further that the close co-operation of church and State during this long period cannot be properly construed without consideration of the very great power wielded by the Anglo-Saxon ecclesiastics, which makes it more probable that the balance of interference was on the ecclesiastical rather than the lay side, and that instead of supposing that there was an undue influence of laymen in ecclesiastical cases, we should infer that there was an undue influence of clergy in lay causes; and that thus national and political as well as legal reasons might be given for the changes introduced by the Conqueror into the system.

These speculations on the character of the ecclesiastical procedure involve the further question of the means by which ecclesiastical decisions would be executed; and on this, as on the other questions, the material is exceedingly scanty. It would, however, seem likely from the general bearing of Anglo-Saxon law that the bishop was able either to direct by his archdeacon and deans the actual enforcement of his sentences, or to call for the services of the shire administration without any previous application to the Crown. Sentences issued in the shire moot would now be enforced by the officers of the shire; sentences issued in the seigniorial courts by the officers of those courts and sentences issued in the more distinctly ecclesiastical tribunals, the existence of which we have inferred above, by the archdeacon and his subordinates. The Anglo-Saxon laws contain provisions for the treatment of the excommunicate corresponding to those for the outlaw, and in many cases prescribe punishments and compensations for ecclesiastical offences, as offences against the national law.

The "Leges Henrici Primi," a compilation mainly from Anglo-Saxon and other Præ-Conquest authorities, gives a list of the "placita ecclesiæ pertinentia ad regem," which may be the class of ecclesiastical causes commonly heard in the shire moot, the fines of which came in part to the king; they are these:—Homicide in churches, detention of tithe, detention of Rome-scot, detention of church-scot, adultery by married persons, perjury, false witness, killing or injuring ordained persons, refusal of confession to the dying, working on holydays, violent detention of the "rectitudines Dei," infraction of holy orders, marriage of widows, reception of excommunicates. Chapter CXI. contains a sketch of the proceedings in each case, and of the rights of king and bishop respectively, ending with a statement of the duty of the secular power to enforce obedience to the law of God, as declared by the bishop.

In submitting these conclusions I feel that I am offering matter which is to a great extent speculative and based on conclusions from analogy and similar inference. But I desire to have it on record, partly as a protest against the very summary and definite statements as to ancient law which are in common circulation, partly as a recognition of the progress which scientific examination has made in the history of the development of English law; but chiefly in its bearing on the later portions of the subject; to which I now proceed.

## II. FROM THE NORMAN CONQUEST TO THE REFORMATION.

The Norman Conquest produced on the English church effects not less important and lasting than were its results in the department of the State. Under the influence of the new dynasty the church exchanged its irregular and somewhat sentimental relations with the foreign churches for a close political connexion; the organising power which belonged so eminently to the Norman genius was exemplified in the creation or development of much ecclesiastical machinery in matters which had been before treated in loose and desultory fashion; the chief ecclesiastical adviser of the Conqueror, Archbishop Lanfranc, was a lawyer and a statesman, and by a curious coincidence the opportunities for a reform of the ecclesiastical constitution occurred at a time when the relation of Church and State, under the contest on investitures, was being generally tested and resettled, and the improvement in legal study was stimulated by the revived knowledge of the civil law, and by the early attempts to codify the canon law.

It will be convenient to arrange our observations on the immediate result of the Conquest under the three heads adopted above in reference to the preceding period.

### 1. THE LAW ADMINISTERED IN THE COURTS OF THE ENGLISH CHURCH BETWEEN THE CONQUEST AND THE REFORMATION.

1. The Norman Conquest, although not immediately followed by sweeping changes in the English episcopate, had before the end of the Conqueror's reign filled nearly all the sees with foreign bishops, to whom all that was national and insular in the church law of England was entirely strange. Notwithstanding the existence of the ancient collections of canons, very much of the ecclesiastical as of the secular law was customary, and not necessarily in accord with the customs of the continent. But on the continent itself the 11th century had seen a considerable development of ecclesiastical jurisprudence. At the beginning of the century the canonist Burchard, of Worms, had collected the received canons and laws of the western churches, and had done as much as he could, by the study of the Theodosian code and the existing institutions of Roman practice, to introduce regularity and uniformity into the church courts. At the close of the century, Ivo of Chartres, who was acquainted with the legal system of Justinian as well as that of Theodosius, made a still more important collection, which was not superseded until the publication of the *Decretum* of Gratian shortly after the middle of the 12th century. Nor were these attempts singular; it is probable that the "leges episcopales" which the Conqueror, in his charter already referred to, mentions as the laws by which the episcopal courts were to be guided, were already more distinctly drawn out and codified in conformity with the usages of foreign churches. The words of the edict imply both a system of "episcopales leges," which were not in accord with the canons and therefore required amendment, and a system which was *secundum canones* and henceforth to be followed. Still any



changes in the character of the law administered in the English church courts, whether gradual or rapid, must have rather resulted from improvements in the scientific study than from the imposition of any new code. As a matter of fact, no new code of ecclesiastical law ever was authoritatively imposed, and attempts to force on the church and nation the complete canon law of the middle ages were always unsuccessful. The declaration of the law still remained chiefly in the mouth of the judge, who declared it out of his own knowledge and experience without reference to an authoritative text. He was supposed to be educated in the legal system of the church, of which the collections of canons were manuals but not codes of statutes; if he erred, his error could be corrected at Rome if the suitor were able to reach the supreme court of church judicature there.

The laws of the Church of England from the Conquest onwards, were, as before, the customary church law developed by the legal and scientific ability of its administrators, and occasionally improved and added to by the constitutions of successive archbishops, the canons of national councils, and the sentences, or authoritative answers to questions, propounded by the Popes. Many of their constitutions, canons, and regulations had but temporary force, and much of the ecclesiastical legislation of the 12th century, as of the preceding centuries, survived only in the pages of the chronicles. The *decretum* of Gratian, the basis of the text of the Roman church law, came into common though not authoritative use; and the great prelates of the 13th century, whose dates coincide with the beginnings of the growth of statute law of England, gradually developed that independent and imperfect system which prevailed in England until the Reformation, the text books of which were John of Ayton's commentaries on the constitutions of Otho and Othobon, and the collection of provincial constitutions, subsequently arranged and systematised by Lyndwood in the *Provinciale*.

The laws which guided the English courts up to the time of the Reformation may then be thus arranged:—

1. The canon law of Rome, comprising the *decretum* of Gratian, the decretals of Gregory IX. published in 1230, the *Sext*, added by Boniface VIII., the Clementines issued in 1318, and the Extravagants or uncodified edicts of the succeeding Popes.

A knowledge of these was the scientific equipment of the ecclesiastical jurist, but the texts were not authoritative. The English barons and the king at the Council of Merton refused to allow the national law of marriage to be modified by them, and it was held that they were of no force at all when and where they were opposed to the laws of England.

2. The civil law of Rome was, so far as procedure went, an important part of legal education, but this, from the reign of Stephen onwards, was refused any recognition except as a scientific authority in England, was kept under even more jealous restrictions than the canon law, and was only tolerated in those departments of law, such as the maritime and matrimonial, for which the national law afforded no adequate directions, and in which it was especially important that English practice should agree with that of foreign nations.

3. The provincial law of the Church of England contained, as has been stated, the constitutions of the archbishops from Langton downwards, and the canons passed in the legatine councils under Otho and Othobon. The latter, which might possibly be treated as in themselves wanting the sanction of the national church, were ratified in councils held by Peckham. The commentaries of John of Ayton and the carefully edited digest of Bishop Lyndwood were the finally received texts of this portion of the law, and contained large extracts from the civil and canon law of Rome; but the comments were not, any more than the secular treatises of Bracton, Britton, and Fleta, received as equal in authority to statute law. The provincial constitutions of Canterbury were received in York in 1462.

Before proceeding to the next head, a question arises which certainly is clearly connected with the present inquiry, what amount of State authority was given to the ecclesiastical legislation, and by what means did the kings interfere to prevent the addition to the national canon law of constitutions and regulations prejudicial to the rights of the subject or the authority of the Crown.

The answer to this question might, if it were treated exhaustively, lead to much discussion. It must be generally stated that, although the practice varied at different times, the policy of the kings and archbishops generally prevented the question from being summarily decided.

It was a part of the policy of the Conqueror to secure that no general council of the bishops should enact or forbid anything but what was agreeable to his own will or had first been ordained by him. In the reign of Henry I.

the king's assent to certain statutes made in councils of the clergy is distinctly expressed. But from this time onwards, and certainly after the accession of John, the method of restraint was confined to the issue of warnings and prohibitions addressed to the Archbishop of Canterbury, and to the rare occasions on which the primate was obliged to recall an act once passed.

There are many prohibitions of this kind issued during the 13th century, when Archbishops Boniface and Peckham exerted themselves greatly to enlarge the area of ecclesiastical jurisdiction, especially in relation to the laity. But the practical conclusion arrived at seems to have been that, except where the Crown or Parliament took direct umbrage at a particular enactment, freedom of ecclesiastical legislation was generally permitted. Many of the bishops made canons in their diocesan synods, which were received generally in other dioceses, according to the estimation in which their authors were held, and no doubt influenced the received interpretation of ecclesiastical law, although they did not become incorporated with the *provinciale*. It must be observed, however, that, in all the recorded interferences with church legislation, the royal power acts only in restraint of acts relating to temporal matters, and in general to those which, in the department of procedure, come under the head of prohibition.

## 2. THE COURTS OF THE ENGLISH CHURCH FROM THE CONQUEST TO THE REFORMATION.

These courts are the provincial courts under the archbishops and their officials, the diocesan or consistory courts under the bishops and their chancellors; the courts of the archdeacons supplemented by the agency of the rural deans; and the courts of exempt jurisdictions and peculiars. As the Norman Conquest indirectly by the change of persons and principles infused into the English church law greater energy and new elements, it was naturally to be expected that an increase in judicial machinery would follow.

Before proceeding to detail it may be as well to insert here a brief abstract of the Conqueror's edict which separated the work of the ecclesiastical judges from that of the shire moot, and which forms an important landmark in the development of the church judicature. The king announces that with the advice of the archbishops, bishops, abbots, and magnates he has determined on the amendment of the episcopal laws which up to his time have not been kept in England according to the precepts of the sacred canons. He therefore orders that no bishop or archdeacon shall henceforth hold pleas touching ecclesiastical laws in the hundred court, nor draw to the judgment of secular men causes which pertain to the government of souls; whoever, according to the episcopal laws, is summoned for any cause or fault, is to come to the place chosen or named by the bishop, and there make his answer, and, not according to the hundred, but according to the canons and episcopal laws, is to do right to God and his bishop. If after being thrice summoned he refuses to attend and amend, he is to be excommunicated, and, if necessary, the force and justice of the king and sheriff is to be called in to vindicate the sentence; and for each act of contempt amend is to be made to the bishop. In the same way the sheriff or reeve, king's servant or other layman, is forbidden to interfere with the legal proceedings which belong to the bishop; and the administration of the ordeal is placed in the bishop's hands.

The immediate result of this act was to give greater recognition and consolidation to the courts of spiritual jurisdiction. To the existing judicature of the archbishops and bishops was added the judicial organisation of the archdeacons. Under the Anglo-Saxon system, so far as we are able to discover, the only judges in church courts were the bishops and such abbots as possessed exempt jurisdiction. The archdeacons, who were in no case probably more than one for each diocese, were simply executors of the bishop's sentences, as were also the deans, who towards the close of this period, possibly introduced in conformity with foreign practice, appear in the records of the time. But the edict of the Conqueror mentions the archdeacon as well as the bishop as holding pleas in the hundred court, and there is no doubt that this edict was either accompanied or followed by a great development in the number of archdeaconries, and presumably by the amplification of archidiaconal jurisdiction. An examination of the dates at which the existing archdeaconries were formed shows that they were in close chronological connexion with the act of the Conqueror. From this, and from the details introduced under the first head, it is inferred that the archidiaconal courts were now formed, as ministerial subsections of the episcopal jurisdiction, or-



ganised to enforce and execute the newly-introduced law and procedure of the canon law, and multiplied in order to meet the increased activity of ecclesiastical litigation. The office of the archdeacon is in its origin simply ministerial, and such, no doubt, was its position in these early courts, in which the archdeacon probably sat representing the bishop, much as his steward sat in the seigniorial courts. But the tendency of all such institutions is to create new jurisdictions, and, early in the 12th century, the English archdeacons possessed themselves of a customary jurisdiction, including certain matters of importance, and in particular cases, as that of the archdeaconry of Richmond, augmented by recorded acts of devolution from the bishops. Great care was taken to fit the archdeacons for their judicial work; they were generally kept in deacon's orders in order that sacerdotal hands might not be soiled with the questionable subject matter that was brought before them; they were educated in the civil law rather than in the canon law, which was only in process of development, and at foreign universities, where they learned habits and vices strange to the Englishman of the time. Their jurisdiction, aggressive as it was, was viewed with apprehension by the bishops and detested by the clergy. Accordingly, about the middle of the 12th century, and at a time more clearly synchronizing with the publication of the decretum of Gratian, an attempt was made generally in the church to limit the authority of the archdeacons' courts and to supersede their action. This was done by the creation of the office of *official*; a function generally devolving on the chancellor or chief secretary of the prelate, who was appointed, not as a mere or special delegate, but as judge ordinary, to execute all the jurisdiction inherent in the person of the bishop or archbishop, his principal. The office of official was in its earliest form perhaps a mere substitution of a judge, which did not preclude the possibility of the bishop acting in person; but there was no appeal from the official to the bishop; and it subsequently became the practice of the bishops in the act by which they created the official to express distinctly the points of jurisdiction reserved to themselves, ceding free exercise in other points to their agent. On this point, however, and on the question at what time the official ceased to be the mere nominee of the existing bishop, and began to retain office after the death, or removal, or beyond the pleasure of his original patron, more information is needed.

The present practice, which grew up probably in the 17th century, and according to which these appointments are made by letters patent and confirmed by the dean and chapter of the cathedral, secures the nominee in possession of his office for life. The legality and importance of the practice are examined by Bishop Gibson in the preface to the Codex, p. xxvi. Fournier (*Officialités au moyen Age*, p. 19) regards the idea that officials should be unremovable judges as based on an absolute mistake as to the character of the institution. The point seems to have caused discussion in other churches besides the English.

The origin of the archidiaconal courts, and the substitution of the official for the bishop in the consistory courts, is thus accounted for. The existence of smaller peculiar jurisdictions in the hands of deans, chapters, and prebends, abbeys and private founders, is a matter of minor importance. It may be briefly stated thus:—In the early stages of English church history the bishop and his chapter held their estates together, and the seigniorial as well as spiritual jurisdiction was exercised for the whole territory by the bishop and his clerks. But after the Conquest, probably as the result of negotiations and disputes which had been long going on, the lands of the cathedral church were apportioned, some to the bishop, others to the collective chapter, and others to individual stalls; properly the seigniorial jurisdiction which appertained to the land should alone have been divided with the land, but as a matter of fact, in a great number of cases, the ecclesiastical jurisdiction was subdivided also, and a number of small spiritual courts was created, with the right of granting marriage licences, proving wills, and hearing complaints; and inflicting penances. The bishops themselves retained in their own hands the spiritual administration of the estates lying outside their own dioceses, which formed part of the endowment of their sees. This arrangement, which is as old as the Conquest, if not a relict of a still earlier confusion between the secular and spiritual jurisdiction of the bishops, led to a great number of disputes which, in one shape or another, affect the ecclesiastical history of the 12th century. The peculiars of the see of Canterbury were, as we shall see, so numerous and important as to contribute a distinct element in the development of the provincial court. The same result attended the exemption of the greater abbeys. The relation of these peculiar courts to the general administration of the diocese was not uniform, but needs no minute elucidation here. Another class of peculiars was that of the

king's chapels royal, which were exempted from ordinary episcopal jurisdiction, but had courts, &c. of their own, in which the same laws and procedure were observed; the right of interfering on appeal with these royal peculiars was one of the points on which the conduct of the archbishops laid them open to most frequent prohibitions.

Under the class of *officials* come most, if not all, of the jurisdictions which were multiplied from the 12th century onwards, under the names of commissaries, surrogates, &c.; the power of deputing or substituting being very frequently exercised by all classes of ecclesiastical judges.

That the functions of an ecclesiastical judge should be exercised only by persons qualified by the possession of Holy Orders, seems to have been a principle so universally admitted as to require no general enactment. The judicial authority was inherent in the office, whether of original or delegated jurisdiction, but the possession of some grade of Holy Orders was an indispensable qualification for the office. This principle, the historical growth of which lies outside of this department of our subject, is definitely enunciated by Pope Eugenius III. in a passage which was inserted in the decretals of Gregory IX., lib. II., pt. 1, c. 2: "we decree that laymen do not presume to handle ecclesiastical business; but bishops, abbots, archbishops, and other prelates of churches, may not dispatch (or dispose of) ecclesiastical business, especially such as is known as spiritual, by the judgment of laymen, nor shall they on account of their prohibition neglect to exercise ecclesiastical justice." This rule was so far amplified or explained by Archbishop Chichele in a constitution embodied by Lyndwood in the Provinciale, lib. III., pt. 3, as to extend to married clerks as well as laymen, and that in words which show the contrary practice, although an abuse, to have been not unusual: "Inasmuch as the church suffers no small scandal and ecclesiastical authority and censure are alike brought into contempt by the fact that married clerks, bigamous, and laymen presume to exercise ecclesiastical jurisdiction, and sometimes in their own name and sometimes under the shadow or cloak of the names of others, to investigate and inquire concerning crimes and excesses pertaining to the cognizance and coercion of the church, and to punish and correct them, and to decree letters of excommunications and suspensions, &c.," it is ordained and enacted that no married clerk, bigamous, or layman shall henceforth exercise any spiritual jurisdiction in his own name or in that of another person within the province of Canterbury. There can be little doubt that the practice so condemned had been at least connived at during the age preceding Chichele's constitution, and the commentaries on the passage show that it was still a question whether, by command of a superior, a lay judge might excommunicate or suspend.

This point is probably capable of a good deal of historical illustration, and is carefully worked by the later canonists. Such points as the exercise of legatine functions by a king or other lay legate, the power of a legate in minor orders to suspend an archbishop, the fact that the archidiaconal jurisdiction was generally exercised by archdeacons in deacons' orders, and in general the sufficiency of any grade of Holy Orders as a qualification for the office of ecclesiastical judge, are points which need not be discussed here, but which must be interpreted as showing that the weight assigned to the properly spiritual qualification was not regarded as of primary importance where the judge possessed by reason of office or delegation, and professional authority, the practical requisites of his high function.

Besides the jurisdiction exercised in the provincial and consistory courts by the archbishops and bishops, and by the archdeacons in their archidiaconal courts, a certain amount of ecclesiastical judicature originated in the practice of visitations, a very ancient duty of the episcopal office, which, like the more formal action of the consistory, was devolved in early times in part on the archdeacons. The episcopal visitation, occurring at stated times and places and intended to secure the proper supervision of churches and ecclesiastical work, was a part of the more ancient procedure which was prescribed or defined by the Roman law, and had been (even before the establishment of Christianity in the Empire) a part of the apostolic work of the bishops; and it had continued to be a customary part of the bishop's work, for which rules of action and minute details of inquiry and correction were laid down in the penitentials. In England, in the jurisdiction of the county courts first, and of the itinerant judges later on, the secular agency of justice moved in very similar grooves. The visitation of the diocese was intended to give opportunity for hearing complaints of and by the clergy, and correcting all abuses so presented. The visitation (eo nomine) was not a part of the work of the diocesan synod or archidiaconal chapter; and, indeed, by the constitution of Archbishop Langton



(Lyndw. iii. 22) the archdeacon is forbidden to hold the chapter (or synod) of his archdeaconry and the visitation on the same day. But there can be little doubt that, owing to the increased expenditure for procurations and synodals, the burden of providing for the bishop, archdeacons, and officials in their visitations and synodal meetings, it was found convenient to hold the two meetings very near together; and the visitation and the diocesan synod in later times became almost identified. At the early period, however, on which we are now employed, the visitation was probably an effective court of justice, from which, no doubt, if the parties to litigation could not be satisfied on the spot, the further consideration of their suits would be carried to the settled courts. It stands therefore in some analogy with the early stages of the system of grand jury.

In the 13th century Bishop Grosseteste, with that strong love of practical reform which characterised his whole career, endeavoured to extend the use and importance of the visitation by compelling the attendance of sworn presenters of grievances and summoning witnesses under conditions only lawful under the direct authority of the Crown. This was resisted by Henry III. and his lawyers as an aggression on the common law of the land, and the attempt was foiled for the time; but, as was the case in some other departments of law, the end aimed at was probably achieved by means of some evasion, or roundabout proceedings, for the visitation presentments continued to be an effective part of the episcopal and archidiaconal judicature down to recent times.

Before proceeding to the next division of the subject it is necessary to advert to an event which introduced a new element into the ecclesiastical government of England, and one which occasionally led to considerable entanglement and conflict of jurisdiction. This was the development of the legatine system of the see of Rome, and the acceptance by the archbishops of the character of legates of the apostolic see. The employment of legates, which had been frequent under the earlier popes, was by Gregory VII. made a part of the ordinary government of the church; and the doctrine that the whole episcopal jurisdiction exists by delegation from the chair of St. Peter, although not formulated so distinctly as by Pope Martin V., was acted upon by the Hildebrandine lawyers. England resisted the intrusion of foreign legates sent from time to time to interfere in domestic matters, and to supersede the action of the metropolitans; it was a part of the royal prerogative to forbid the visits of these functionaries; and not only the kings but archbishops, like Anselm, remonstrated against the aggression. According to Anselm the Archbishops of Canterbury, by the law and custom of the church, possessed all the rights and powers that were by the delegation of the pope's powers bestowed upon the legates; a statement which, interpreted by history, means that they were customarily free and independent of foreign interference in the administration of their province. But the *practical* decision of the investiture controversy on the side of the popes and clergy seems to have impressed the English bishops with the belief that it was better to seek for themselves the office of legate than to leave the church open to arbitrary and mischievous interference from without. Archbishop William of Corbeuil in 1127 applied for and obtained the title and office of legate of the apostolic see, which, with some few interruptions, was held by his successors until the Reformation, and was disavowed by Archbishop Cranmer in the Convocation of 1534. The practical effect of this measure was to create a doubt as to the limits of the archiepiscopal jurisdiction and to raise the presumption that acts, which hitherto had been done by the primate as of ordinary authority, were now done by virtue of the legation from Rome. Questions on this point arise from time to time in every century onwards until the Reformation; and the whole history of the church courts is intrinsically affected by it. One of the first points on which it was alleged to be of importance was the right of the archbishop to exercise immediate jurisdiction in the dioceses of his suffragans, the point which was corrected by the legislation of Henry VIII. in the statute of citations. Pope Alexander III. laid down that it was only in his character of legate that the archbishop had this power; although there can be little doubt that it was exercised from very early times, and, indeed, may have been one of the very rights involved in S. Anselm's claim mentioned above.\* This is alleged as an instance of the way in which by the acceptance of new titles and commissions the prelates who thought they were securing the substance of authority gradually impaired their title to the exercise of functions which immemorially and constitutionally belonged to them. The matter is, however, of less constitutional importance than might at

first sight seem probable, for the easily awakened jealousy of the Crown, and the stringent measures taken in each century by the kings for the security of national independence against papal encroachments, had the effect of warning the archbishops not to rest their authority too exclusively on the legatine commission, but to use their independence as judges ordinary. The effect of the acceptance of the legatine commission was not the creation of new legatine courts but the clothing the ordinary courts with some shadow of legatine authority. It was out of this that in the 15th century, when the rising school of common lawyers was attempting to overthrow the church jurisdiction, that the charge was framed, that all the church courts, being held under the legatine authority, were foreign courts, and that action in them subjected the suitor to the penalties of *præmunire*; this was also one of the points used by King Henry VIII. in the proceedings against the clergy after the fall of Cardinal Wolsey, to which we shall have to advert at a future stage of our investigation.\*

The point at which we have now arrived is to exhibit the array of ecclesiastical judicature as it existed from the Conquest downwards only so far as concerns the judicial authority. The actual organisation of the courts depends on further questions of the subject matter and procedure of the litigation, and must be deferred until those points have been set out.

### 3. PROCEDURE IN THE CHURCH COURTS FROM THE CONQUEST TO THE REFORMATION.

Under the head of procedure I propose to take, besides the simple point of procedure proper, the question of the classification of matters of litigation and that of the practice of appeal.

(A.) The first point, the question of procedure proper, may be dismissed in a few words. According to the changes or developments in the law administered, there were steps of growth in the minuteness of the procedure and towards a general likeness with that of the other churches of the west. We have seen that, under the Anglo-Saxon system, the fact that church suits were tried in the shire moot necessitates the belief that the customary methods of popular procedure were adapted, so far as they could be, to the matter in hand; whilst, on the hypothesis, which likewise seems indispensable, that the bishops retained in their hands more completely the disciplinary jurisdiction over the clergy, the procedure before them must have possessed much of that informal and paternal character which, until the study of the Roman law revived, was the customary character of episcopal administration abroad. Notwithstanding the great legal reform of the Conqueror, it is known from the laws of Henry I. that the hearing of ecclesiastical causes in the shire moot did not immediately cease. The first rule for the management of that assembly was, that such business should take precedence of all secular business. From other sources we learn that the episcopal jurisdiction proper was in full exercise, and many of the details of procedure may be elucidated not only from existing cartularies but from the laws of Henry also.

The church courts, once set free from the association with the shire moot, seem to have arranged their meetings, and in some respects their other arrangements, in symmetry with them. The institution of rural deaneries almost coinciding with the hundreds; the functions inquisitorial and executive of the rural deans, analogous to those of the hundred-reeve and sheriff; the fixed *capitula* or synodical assemblies of the clergy, for minor causes every three weeks, and for more important business once a quarter (Lyndwood fo. 10v<sup>o</sup>), like the sheriffs' tourn and three weeks sittings of the popular courts;—these points are in so close symmetry with the ancient national arrangements as to show that, notwithstanding all the innovations introduced by Roman and other foreign reforms, the ecclesiastical jurisdictions still retained a great deal that was indigenous, and, in some respects, simply adapted the popular methods to the execution of the divine law.

But the period to which these remarks apply was very short. As soon as the study of the civil law was made part of the education of the archdeacons and officials, and the increased communication with Rome multiplied suits and assimilated forms of proceeding, the procedure in the English courts was adapted to the customary procedure of the Roman law, and such it has continued to be, with occasional special modifications, down to the present day. It is not to be understood that ecclesiastical procedure follows with literal exactness any order distinctly laid down in the code or the digest; it is probable that it is in itself a development from the much more ancient system which the

\* NOTE.—Lanfranc, ep. 23: "totam hanc quam vocant Britannicam insulam unius nostre ecclesie constet esse parochiam."

\* See Godolphin, p. 104, as to the archbishop's right to cite in the prerogative court.



legislation of both Theodosius and Justinian takes for granted and modifies only in particular points. As has been observed, the code of Theodosius was the real proclamation of Roman law in the west, and brought with it the prescriptive customary forms of the great republic. Whatever of Roman law was introduced into England between 1066 and 1150 was derived from the earlier code. After that date the development was guided by the papal or other continental adaptation of the law of Justinian.

But whatever varieties in the technicalities of procedure mark this epoch, there is no doubt that the constituent law of the Conqueror, by promising the aid of the royal justice for the enforcement of ecclesiastical sentences, virtually withdrew from the ecclesiastical courts all power such as they not improbably possessed at an earlier date, of enforcing their spiritual sentences by material force. It necessitated an appeal to the royal authority for the means of enforcing compliance where the extreme resource of excommunication failed. It is not by any means certain through what stages this process passed, or how long, supposing the bishop to have ever possessed it, he retained the right to call on the sheriff to imprison the excommunicated person. It is clear, however, that early in the reign of Henry III. it had become the rule to apply for a royal writ to the sheriff to carry out the law in such cases. By the statute *de heretico comburendo*, 2 Hen. IV., c. 15, the ordinary is allowed to imprison offenders, and by 1 Hen. VII. c. 4, the diocesan may imprison incontinent clerks and religious, apparently without recourse to the secular authority.

It was by the use of this practical restraint on ecclesiastical assumption, the discretion whether or no the writ of *significavit* should be issued, a discretion scarcely less important than the right of issuing prohibitions, that the Crown was enabled to prevent that amplification of ecclesiastical jurisdiction which at one time threatened to become a co-ordinate and rival power in the State. There is, however, slight evidence that the discretion here supposed was ever used. It seems probable that the application for a writ for enforcing the penalties incident on excommunication was a mere formal proceeding on behalf of the ecclesiastical court at the instance of the litigant or of the court itself, and that the writ was not refused unless some caveat or application for prohibition had been lodged by the inculpat party. On the other hand, it might be alleged that there would be no method of recording cases in which the discretion was exercised, and therefore that we have no materials for deciding how far it was a useful discretion. It is, however, certain that the Crown did frequently intervene to forbid excommunication, or to avert the consequences of excommunication, in cases where its own servants were concerned. This power of intervention was one of the ecclesiastical claims made by the Conqueror, and insisted on by his successors; the permission of a sentence issued against one in the royal service with whom the king might be personally brought in contact, and thereby contract the taint of excommunication, was not to be contemplated. This principle has considerable historic importance in the struggle between Henry II. and Becket.

(B.) It is obvious that as the matters of ecclesiastical litigation multiplied the forms of procedure must have been multiplied to meet them, and it is obvious also that to attempt any examination of these methods in detail would be to codify the whole law of ecclesiastical procedure. But it is important as regards the history of procedure, as well as that of the organisation of the courts, to notice here the multiplication and classification of matters of litigation.

Ecclesiastical jurisdiction in its widest sense covers all the ground of ecclesiastical relations, persons, properties, rights, and remedies; churches, their patronage, furniture, ritual, and revenues; clergymen in all their relations, faith and practice, dress and behaviour in church and out; the morality of the laity, their religious behaviour, their marriages, legitimacy, wills and administrations of intestates; the maintenance of the doctrines of the faith by laity and clergy alike, and the examination into all contracts in which faith was pledged or alleged to be pledged, the keeping of oaths, promises, and fiduciary undertakings. To such a wide subject matter was the rule theoretically extended that no matter touching the government of souls should be tried by a secular tribunal.

1. The principle enunciated in the writ of the Conqueror, that causes touching the government of souls should not be tried by secular tribunals, might be construed as placing the determination of all disputes about ecclesiastical property in the hands of the church courts. It is not, however, probable that it ever practically received such an interpretation; for the Anglo-Saxons themselves had placed the acceptance of estates by the clergy under restrictions of State policy, and the Norman rulers were not likely to relax the hold which the feudal idea gave them over all land-

owners. But it does appear from the letters of John of Salisbury that questions of advowson were for a considerable period treated as ecclesiastical questions, and it is probably here that the first important limitation was imposed on the area of ecclesiastical jurisdiction. Of the very large number of reports made by the Archbishop Theobald to the Pope, most concern patronage. This was reclaimed by Henry II. for the secular courts by the assize of Darrein presentment; it was the subject of the first of the constitutions of Clarendon, and although the innovations contained in those constitutions were renounced by the king, the change had established itself too deeply to be shaken. The questions of advowsons were tried henceforth in the king's court.

2. No attempt seems to have been made by the royal courts to interfere in the ecclesiastical administration of churches, their arrangements, furniture, services, or distribution of their revenues; nor, except in the case of the royal free chapels, to restrain the liberty of the ordinaries within their own jurisdiction.

3. The jurisdiction in testamentary matters and the administration of intestates fell into the hands of the ecclesiastical courts in the 12th and 13th centuries, not, however, without a struggle. As it was impossible to devise freeholds by will, the jurisdiction was restricted to chattel interests, and was in its origin based on the right of the church to enforce obligations of honour and faith by spiritual censures; this was subsequently enlarged by the principle laid down that the church should dispose of the goods of the intestate for the benefit of his soul. The right to compel executors to fulfil their trusts was apparently conceded by the lay courts without difficulty. But this was not an exclusive jurisdiction; many manorial courts possessed the same authority, having probably retained it in unbroken custom from the days in which wills were proved in the shire moot or hundred moot. It is possible that this portion of jurisdiction was won by the clergy as a consequence of the Conqueror's statute; for, although the proof of the exercise of the right being somewhat later, there is no distinct epoch to which the commencement of the exercise might be referred, it is recognised in some points in Stephen's charter and was an established fact before Glanville wrote. The right to regulate the administration of intestates was too closely connected with the testamentary jurisdiction to be conveniently separated from it. It was recognised by the 27th article of Magna Charta, and although that article was omitted in subsequent issues, and Archbishop Boniface found it necessary to assert the right in a constitution of his own, the Crown ultimately acquiesced in the arrangement.

The jurisdiction in testamentary matters was arranged under the department of ecclesiastical law known as the prerogative court of the province, which had a separate staff of officers and an administration of its own. The result of the accumulation of testamentary business was that the prerogative court was separated from the general jurisdiction of the official principal, of which it was primarily a section, and in concert with which all its executive powers, apart from the central judicature, were worked, and placed under the management of a keeper, master, or commissary, who sometimes was official principal as well, but acted on a distinct commission.

4. The jurisdiction of the ecclesiastical courts in respect of marriage, being based on the sacramental and religious character of the ordinance, was never limited or disputed. The claim to determine matters of dower was put forward by Archbishops Boniface and Peckham, but was never conceded by the Crown, and the claim was tacitly withdrawn; the questions of legitimacy which came before the lay courts in the assize of mort d'ancestor were decided by them on the certificate of the bishop of the diocese.

5. The ecclesiastical jurisdiction claimed over the laity, *pro salute animæ*, was of the widest description and was exercised through a machinery of the most extensive character. It may be divided into two sections, (1) the correction of immorality which the law of the State did not touch; (2) the correction of breaches of faith and offences against character, for which there were remedies provided by the common law. In the first case, very strong remonstrances against ecclesiastical interferences were occasionally heard, but no serious attempt at restriction was made before the Reformation. In the second, the jurisdiction in case of breach of contract, perjury, slander, and the like was regarded with more jealousy, especially when the clergy claimed exclusive right to adjudicate in this department, but the simple claim was practically maintained until the Reformation, and in some points even to modern times.

The jurisdiction over laymen in the cognizance of offences against morals, good faith, and good behaviour, was exercised "*pro salute animæ*" in a very wide and indefinite



manner; as a part and result of the visitatorial and penitential discipline of the church, on the information by presentment at visitation, or by express complaint of a party injured, or willing to give information. It is with causes of this kind that the records of the consistorial courts are filled, and it was no doubt the unpopularity of this part of ecclesiastical procedure, and the array of spies and informers which it tended to create, which gave rise to the petitions against the system which helped to bring about its downfall. The procedure in this material was simple and summary, the penalties imposed were of a penitential character, and were capable of commutation for money payment at the discretion of the court.

6. The question of jurisdiction over clerks transgressing ecclesiastical law was entirely in the hands of the church courts, which claimed exclusive jurisdiction over the person as well as the conduct of the clerk accused.

7. The exclusive jurisdiction claimed over the conduct of the clergy affected also the case of offences committed by the clergy against the law of the land; and incidentally, as protectors of the clergy by the ancient law, the bishops claimed jurisdiction in cases of offences committed against them. The contests to which this jurisdiction gave rise form one of the first points at issue between Henry II. and Becket; and the subject of the third constitution of Clarendon. This constitution, if not absolutely renounced in 1172, was so far modified that in 1176 the king agreed that no clerk should henceforth be imprisoned or brought before a secular tribunal for any criminality or trespass, except trespass of the forest and questions of lay fees for which lay service was due; by the same act the murderers of clerks are to incur forfeiture of their inheritance over and above the customary penalties, and the clergy are not to be compelled to ordeal of battle. This concession practically recognised the right of benefit of clergy as enjoyed and amplified to the period of the Reformation.

8. The jurisdiction in the matter of heresy, whether over the clergy or over the laity, is, so far as the ecclesiastical courts go, of exactly the same character and process as the jurisdiction in moral and criminal offences; but it is complicated in some respects partly with the legislation of the Parliament as to the amount of assistance to be rendered by the secular arm, and partly by the question by what authority the inculcated doctrine should be declared heretical.

a. The jurisdiction over the heretic was not in its nature different from that over the criminal, but, owing to the fact that prosecution on this charge was a novelty in England in the 14th century, it appears that as a matter of fact it was seldom or never entertained by a judge below the rank of a bishop or in a court lower than the consistory.

b. But further than this, it would seem that there was, generally, a great aversion to extreme proceedings on charges so wide and so difficult of proof, except on confession of the accused; and a consequent difficulty in reducing the methods of examination, &c. to the usual procedure of the courts. This was partly met by the ordinary of the accused person carrying the trial at once before the archbishop either in his convocation, in his ordinary audience, or in a less formal way for personal hearing. This occasions a great diversity in the forms of early trial for heresy; and it is not before the middle of the 15th century that a uniform and simple procedure seems to have been adopted.

γ. The legislative enactments intended to assist the ecclesiastical power in enforcing justice against heretics are described in a return already presented; Historical Appendix (II.).

In the proceeding against heresy ordered by Archbishop Arundel in the constitution of 1408, it is directed that the prosecution, &c. should be conformed to that of the civil law in case of lese Majesty; that is, as the accused in case of treason is proceeded against, in a summary and informal manner, by first sending a citation of letters by a messenger, by edict, and without a contestatio litis, to the hearing of evidence and to a definitive sentence, so the heretic defamed, denounced, detected, and vehemently suspected, may be cited personally by authority of the ordinary of the place or other superior, by letters, or by a sworn messenger if he can be caught, if not, by an edict in the place of residence, published in parish church, &c., and when the lawful certificate of execution of the summons is received, then proceedings shall follow against the party even if absent or neglecting to appear, without the noise and forms of judicature or contestatio litis, upon the hearing of evidence and canonical proofs, and the same ordinary may without delay sentence, declare, and punish him according to the quality of his offence. Const. Arund. Johnson, Canons II., 473. On the form "sum-

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marie et de plano," &c., see Lyndwood, Provinciale, lib. 5, pt. 5, p. 302; the Clementines, II. i. 2, and V. xi. 2; and the Reformatio Legum, p. 190.

Suspected heretics were to be kept to the next convocation. Const. 1416, *ib.*, p. 483.

δ. The decision whether a point alleged was or was not heretical lay with the judge, guided by the creeds, councils, and in particular, by the constitutions and definitions drawn up by Archbishops Courtenay and Arundel against the followers of Wycliffe.

ε. It is a question how far in these proceedings the archbishops and bishops acted as inquisitors of heretical pravity or as ordinary judges.

ζ. The question has also been raised how far the archbishop in dealing directly with cases of heresy outside his own diocese was acting as legate of the apostolic see, on the understanding referred to above.

η. It is, however, certain that the diocesan bishops in taking cognizance of heresy acted as judges ordinary, for they had no commission from either the pope or the archbishop as officers of a legatine or inquisitorial system. Indeed, according to the repute of the canon law, every bishop was *inquisitor natus* in his own diocese.

I am obliged to leave to the definition of the legal members of the Commission the more particular but not less important questions of the initiation of suits, by instance or of office, and the distinction between *ex officio mero* and *ex officio promoto*; and between plenary and summary treatment.

(C.) Two important points, however, remain to be stated before proceeding to examine the changes in the ecclesiastical judicature which took place at the Reformation. The question of appeal from one ecclesiastical court to another, and the question of prohibition or interference by the secular power with the exercise of ecclesiastical jurisdiction or execution of sentences.

The right of appeal from the actual decision of an inferior court to the superior court was, as we have seen, little known or practised in the early middle ages. The primitive way of disputing a decision was to challenge the court itself; but, from the time of the Conquest, in both spiritual and secular matters a system of appeals gradually began to develop in both regions of jurisprudence, following to a great extent the outlines of the Roman law.

a. The right of appeal, or *provocatio*, exercised by a person either oppressed by, or apprehending oppression from his immediate superior, was from an early period after the Conquest constantly employed to stay the action of the superior, even before the matter in question had begun to receive judicial treatment. In this way whoever felt himself in danger from his bishop would appeal to the archbishop or the pope, put himself, that is, under his protection, and stay all proceedings to his prejudice in the court from whose threatened action he appealed. This was, in legal language, the extra-judicial appeal, or appeal a gravamine; and to this class belong nearly all the recorded appeals made to the see of Rome during the prevalence of the Norman system of government as well as a very large proportion of the whole number of appeals recorded in medieval history.

β. The right of appealing from a definitive judgment, or from an interlocutory decision having the effect of a definitive judgment, was known as the judicial appeal, and, when normally employed, formed a regular proceeding in the gradation of the courts.

γ. In the case of the extra-judicial appeal notice was given by the appellant to the person or court from whose action he appealed, and, when this had been received and admitted, it had the effect of making further proceedings on the part of the appellee void; the appellant sent his statement of his grievance to the court appealed to, and in fact acted much like the plaintiff in an original action; a formal statement was also sent in by the person appealed.

δ. Where the complaint was made against a formal decision in court the appellant made his appeal within a certain time after the issuing of the sentence, and demanded *apostoli* or letters dimissory from the court, containing, with leave to appeal, the statement of the circumstances of the case on which the decision was given.

ε. The letters of John of Salisbury, before whom as secretary, and possibly official of Archbishop Theobald, the long series of these early appeals came, contain a large number of reports to the see of Rome of the cases appealed on, and are of the

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nature of *apostoli*, although not, perhaps, formally such. Most of these appeals are on matters which at the time lay in the debateable land between the temporal and spiritual jurisdictions, matters of advowson, and of the law of legitimacy. None of them has any reference to matters of faith, ritual, or morals. In time they all fall between the year 1155, early in the reign of Henry II.; and the year 1161; and they may be fairly considered to be specimens of the sort of appeal, or, in fact, the identical appeals which called for the legislation applied by that king in the constitutions of Clarendon. By the eighth constitution the king ordained that appeals should proceed from the court of the archdeacon to that of the bishop, from that of the bishop to that of the archbishop; and if the archbishop should fail to do justice, recourse should be had to the king himself, that by his precept the controversy might be terminated in the court of the archbishop, so that no further proceeding should be had without the consent of the king. This ordinance may be fairly interpreted as representing the normal state of the law under Henry I., which had been to some extent broken down by the appeals encouraged under Stephen, and was threatened, if not altogether superseded, by the measures ascribed to Becket. It provides for a regular gradation of appeals, but allows a rehearing of cases, in which the archbishop has failed to do justice, to be granted on special command of the king; and in extreme cases, by forbidding further proceeding without the king's assent, allows a further appeal with the king's assent, which means, without distinctly expressing it, an appeal, with the king's licence, to the see of Rome. It may be useful here to give some references on these points.

(a.) A suit in which the archbishop having failed to do justice, the king orders a rehearing in the archbishop's court; it is, however, to be observed that defect of justice must not be confined to the giving an unfair decision, but to the refusal or delay which was so common in the judicial proceedings of the time.—“We (the archbishop) have received the king's letters in which he complains that abbot William and his church of Lilleshall have been ill-treated by us, asking that the cause which is being carried on between you and the abbot be terminated by us with a canonical decision (a nobis fine canonico terminari), and, if you will not agree, he will not suffer you from henceforth to hold anything in that church. We have persuaded the abbot to renounce his appeal if you will renounce yours, and to submit to our judgment.” Joh. Salisb. ep. 47.

(b.) A suit in which the long length of litigation passes through all its stages; case of R. of Anesty; Joh. Salisb. ep. 89; *Fœdera* I. 20; Palgrave, *Rise of the Commonwealth*, vol. ii. pp. lxxv. sq.

(c.) A case of appeal from gravamen; case of the monks of Canterbury against the archbishop, illustrated by a long series of letters printed in the *Epistole Cantuarienses*.

Although the chief examples of the appeal are from this period, there were many instances during the pontificate of Lanfranc and Anselm in which the licence of the king was apparently granted or the appeal carried on under his tacit permission. See Lanfr. epp. 28, 30.

7. The absolution of Henry II. from the guilt of Becket's murder was granted on the condition of his renouncing the evil customs embodied in the constitutions of Clarendon. This annulment has the effect in this matter of abolishing the king's right to withhold licence of appeal to Rome. The restraint intended to be exercised was henceforth affected by the common law right to forbid any subject to quit the kingdom and to forbid the introduction of papal or other letters without leave. This was freely exercised in dangerous times, but as a rule, in ordinary times and between ordinary litigants, it had little effect in staying appeals, which from this time to the Reformation went on without much hindrance.

9. Appeals from the date 1173 to the Reformation:—

1. Of the later appeals to Rome as of the earlier, it may be said that the greater proportion were extrajudicial, but a certain number of recorded appeals from definitive sentences may be alleged. There is no great difference in the subject matter of these appeals.

2. It being premised that the cognizance of questions of advowson, of legitimacy, and dower, in fact, all questions that concerned the title to real property, was by the secular legislation of Henry II. withdrawn entirely (save by way of certificate) from the church courts, and was, notwithstanding the attempts made in the 13th century, never recovered. The subject matters of the appeals are mainly as follows:—

Disputed elections to episcopal sees; matrimonial and testamentary causes; disputes relating to the authority of the bishops and abbots in cathedral and conventual churches; disputes as to the construction of statutes or customs of precedence and the like in cathedral churches; miscellaneous cases, intrusion, &c.

3. We fail to find any recorded cases of appeal against a sentence for immorality of clerk or layman, or for heresy, or for direct disobedience of any kind. The general conclusion is, that customarily no appeal was admitted from a definitive sentence decreed simply for correction, not involving the interests of a party or parties to the suit. Archbishop Winchelsey, however, in his statutes for the Arches Court, certainly allows an appeal *pro tuitione* under such circumstances from the diocesan to the provincial court (Wilkins, Conc. ii. 208); and suits for correction, if alleged to be promoted *ad instantiam partis*, were liable to inhibition by the Court of Arches (*ib.* iii. 243).

§. It is not to be supposed that the kings or bishops were the only people who attempted to stay the prevalence of appeals. The abuse was itself regarded by the popes as offensive, and several measures were adopted for preventing the absolute paralysis of all ordinary jurisdiction which resulted from it. In support of this may be adduced the canons of the Lateran Council of 1179 and other councils, and the constitution of the council of Oxford referred to in Mepham's Constitution on appeal; Lyndwood, lib. ii., tit. 7; Wilkins, Conc. ii. 553; Johnson, Canons, ii. 350, 351: (compare the canon of the synod of *Exeter* in 1287: “terminum designent appellantes infra quem coram nobis vel officiali nostro commodè comparere valeant, appellationes suas prosecuturi, ac ipsis petentibus instanter concedant apostolos, in quibus, si a gravamine vel interlocutorio ab ipsis fuerit appellatum, appellationis causam expriment. Et si ipsam non duxerint admittendam, cur hoc, nobis expresse, designent; patienter etenim sustinebimus, si eorum appellationes admittæ non fuerint, quorum excessus evidentia rei vel ipsorum confessione, aut alio legitimo modo notorii fuerint et manifesti, vel appellationes alias frustratorie evidentes.” Wilkins, Conc. ii. 154. But these restrictions were insufficient to meet the activity of the canon lawyers and others who lived on this sort of litigation. The restraint of appeals was interpreted as a fettering of the action of justice, and the *apostoli* were hardly ever, if ever, refused.

In the contrary direction, the practice of appeal to Rome was capable of very great extension and development; not only might a matter in dispute be treated over and over again, delegacy superseding delegacy, and appeal being interposed on every detail of proceeding one after another, but even after a definitive decision a question might be reopened and the most solemn decision be reversed on fresh examination. On this system of rehearing there was practically no limit, for, however solemn the sanction by which one pope bound himself and his successors, it was always possible for a new pope to permit the introduction of new evidence or a new plea of exceptions. In this way the Roman Court remained a resource for ever open to litigants who were able to pay for its services, and the apostolic see avoided the imputation of claiming finality and infallibility for decisions which were not indisputable. But it is needless here to run into detail on this point.

The statutes of præmunire were intended to prevent the recourse to Rome upon points which the civil tribunals at home were competent to settle; and they were indeed little more than an additional sanction to the right, constantly asserted by Henry III. and Edward I., of what was called the privilege of England, “quod nullus Anglicus posset a quoquam per litteras sedis apostolicæ extra regnum evocari; cum a sede apostolica nobis specialiter sit indultum ne quis de regno nostro in foro ecclesiastico extra regnum nostrum per litteras apostolicas trahatur in



"causam;" Prynne, Records, ii. 628; cf. pp. 718, 941, 980; also p. 561, and for the reign of Edward I., Prynne, Records, iii. 227.

But they did not preclude the possibility of appeals made with the licence of the Crown, or upon subjects which the courts of the kingdom were not competent to entertain. Many cases continued to be carried to the papal court, and it is probable that the great schism of the west, followed by the constitutional struggles of popes and councils in the 15th century, had far more effect in stopping appeals than the statutes of *præmunire*. That the appeals were diminished in number appears certain from the urgency with which Pope Martin V. impressed on Archbishop Chichele the need of repealing the statutes; but probably other causes coincided in bringing about the result. Certain also it is that the Crown had to some extent connived at the breach or suspension of the statute of *Præmunire*, as was done sometimes with and sometimes without the consent of Parliament in the case of the statute of provisors.

It is further to be noted that the subject matters of appeal were before the Reformation almost if not entirely reduced to the matrimonial and testamentary questions.

The last point to be considered in relation to this period is the question of prohibition; the royal power of intervening to stay the proceedings of the ecclesiastical court where that court by an aggressive act of jurisdiction was either encroaching on the province of the secular court, or was threatening to prejudice the rights of the subject in ways against which he might justly invoke the aid of the Crown.

The attempt of the Crown to maintain a guard over the ecclesiastical courts by the presence of one of its own officers at all trials, as it was made by Henry II., does not seem to have succeeded, and probably, like the discretion as to the issue of the writ for imprisoning the excommunicate, it had become an almost useless weapon. In the right of prohibition the Crown possessed another weapon which might be put in use by the defendant in an ecclesiastical action without calling for a constant vigilance on the part of the officers of the crown. Sometimes, however, it was used by way of anticipation. Thus Geoffrey FitzPeter as justiciar prohibited Hubert Walter as legate from holding pleas; and in Glanville the germ of the later practice may be further traced. Glanville, lib. 4, 12-14, lib. 12, 21-22.

But the great era of the common use of prohibitions begins with the reign of Henry III., in which, owing to the constant aggressions of the archiepiscopal jurisdiction, they were extremely necessary. Henry III. in 1246 and 1247 issued ordinances expressly confining the ecclesiastical courts, in matters of civil interest, to the jurisdiction, long established in their hands, in testamentary and matrimonial causes; but besides this the rolls abound with instances of special prohibitions chiefly on the following points:—

Against the entertaining of suits touching freehold; touching the king's peace; touching debt cognisable by common law; touching tithe of *Essarts*; touching the prohibition by the archbishop about selling provisions to the canons of St. Oswald; for admission of plea after it had been decided in the king's court, &c., &c.

These prohibitions, it will be seen, have little reference to spiritual questions, but in the following cases there is some shadow of such interference:—

Prohibition on a suit for compelling a royal chaplain to reside; on oath administered *de parendo juri ecclesiastico*; on excommunications issued.

The chief historical interest of the subject of prohibitions belongs to the reigns of Edward I. and Edward II., and to the so-called statutes *circumspecte agatis* and *articuli cleri*, which may be cited with notes of the legal doubts respecting them. An enormous mass of documentary evidence on the subject is put together by Prynne in the second and third volumes of his Records, to which a general reference will suffice.

As a supplement to this section of our report it might be sufficient to add the general outline of the ecclesiastical courts as they existed in the year 1832 and are described in the report of the Commission of that year; or the following sketch drawn in connexion with the foregoing observations:—

The ecclesiastical courts of England during the middle ages were the judicial tribunals of the several grades of ecclesiastical officers who possessed any measure of jurisdiction, or had functions subsidiary to the exercise of jurisdiction. Ecclesiastically the kingdom was divided into provinces, the provinces into dioceses, the dioceses into archdeaconries, and the archdeaconries into deaneries; and besides these there were peculiars, or courts of special jurisdiction, belonging to the Crown, the archbishops, the bishops, the deans, chapters, prebendaries, and others, as well as to the monasteries and exempt bodies of the same character. The courts therefore arrange themselves in

corresponding gradations into provincial, diocesan, archidiaconal, *uridecanal*, and peculiar. As the laws, procedure, and general constitution of the peculiar courts are merely such as belong to sectional or exempt divisions of diocesan jurisdiction, we do not propose to reproduce here any of the material on this head collected and arranged by the Commission of 1832.

The provincial courts are those which belong to the jurisdiction of the archbishops; and are essentially the same in both provinces, although the forms and historical development of the courts of the province of York vary considerably from those at Canterbury.

The provincial courts of Canterbury during the period before us were four; the court of the official principal, the court of audience, the prerogative court, and the court of the archbishop's peculiars: to which for the sake of completing the outline may be added the court of the Convocation of the province, in which the archbishop exercised jurisdiction occasionally in the presence and with the advice of the clergy; and the personal jurisdiction of the archbishop himself exercised informally and perhaps extrajudicially. The courts of York were the prerogative court and the Chancery court.

1. The court of the official principal of the Archbishop of Canterbury, commonly known as the court of the arches, was the consistory of the archbishop, held by the official principal, in the church of St. Mary-le-Bow, and had a distinct staff of officers and body of advocates. It was the court of appeal from all the diocesan courts of the province, and likewise (whether or not by virtue of the archbishop's *legatine capacity*) a court of first instance in all ecclesiastical matters. The official principal from an early period bore also the title of dean of the arches, as holding the office of judge of the archbishop's peculiars whose court was held in Bow Church. Originally the dean of the arches was a subordinate of the official, subsequently he became his commissary, and finally the two offices were regularly held together. As official principal the judge was held to possess all the judicial power of the archbishop; his jurisdiction extended over all ecclesiastical causes; he issued process in his own name, and seems in all respects to represent the archbishop in his judicial character as completely as the chief justice represented the king.
  2. The court of audience seems to have originated in the personal jurisdiction of the archbishop, which was not regarded as exhausted by the appointment of an official principal. According to Archbishop Parker its origin was in this, "that the archbishop himself" defined many causes at home and out of court, "which before pronouncing judgment he committed" for discussion to men skilled in the law and "learned, who were called his auditors. This was" therefore the domestic and familiar court of the "archbishop, and his auditors followed his person."—*Antiquitates*, p. 46. Little is known of the early growth or exercise of this jurisdiction; but it is said to have possessed co-ordinate powers with the court of arches. At a later period we find that the consistory court of St. Paul's was its place of session: that its members were reduced to one, the judge of the court of audience, who occasionally was also vicar-general, and who issued process not in his own name but in that of the archbishop.
  3. The prerogative court of Canterbury, to which belonged the testamentary jurisdiction, when not under the official principal, was held by another judge with the title of master, keeper, or commissary. He issued process in the name of the archbishop, and originally sat in the archbishop's palace, from whence owing to the great increase in business the court was removed about the date of the Reformation to London, and subsequently sat at Doctors' Commons. The business of this court, which must originally have been part of the work of the official or vicar-general, was conducted *summarie*.
  4. The archbishop's court of peculiars, which was the original sphere of the dean of the arches, was held in Bow Church, and adjudicated on causes arising within the thirteen London parishes, which, as peculiars of the archbishop, were exempted from the diocesan jurisdiction of the Bishop of London. The peculiars of the archbishop in Essex were under the jurisdiction of the Dean of Bocking. He had other peculiars in the dioceses of Rochester, Chichester, Winchester, Lincoln, and Norwich under commissaries.
- The diocesan jurisdiction of the archbishop in the diocese of Canterbury was exercised by a commissary.



The jurisdiction exercised by the archbishop in Convocation, in matters of heresy, which are the chief illustration of this sort of judicature, is the subject of another return presented to the Commission; *Hist. App. (II.)*.

The provincial courts of the province of York, known as the prerogative court and the Chancery court, seem to have answered to the general description given above of the prerogative court and court of arches for the province of Canterbury, but the title of auditor of the Chancery court of York, which is given to the official principal, seems to refer to a state of things in which the consistorial and auditorial jurisdiction were distinct.

The diocesan courts were the consistories of the bishops, held by the chancellor as official principal in each diocese, from which there was an appeal to the provincial court, and in which, besides causes of first instance, appeals were heard from the jurisdiction of the archdeacons. The consistory court was held in the cathedral church of the diocese, and was competent for every sort of ecclesiastical cause, including the matters which in the provincial courts were distributed between the court of arches and the prerogative court. During the vacancy of an episcopal see the consistorial jurisdiction was exercised by the archbishop through the vicar-general of the province, whose authority was here extended to contentious causes (*Oughton, Ord. Jud. I. 17*). The authority of the bishop was exercised also by commissaries acting under commissions for more limited districts and with more limited functions than belonged to the chancellors or official principals, and from their decisions appeal lay to the bishop, the appeal from the chancellor lying to the provincial court only. The commission of the chancellor or official principal of the bishop differed from that of the official principal of the archbishop, in not necessarily conferring the whole judicial authority of the bishop, who in some instances reserved particular portions of jurisdiction for his own hearing, as is done at the present day.

The courts of the archdeacons were originally merely executive departments under the eye of the bishops; but, as has been stated, soon after the Norman Conquest these officers secured to themselves a prescriptive or customary jurisdiction, as sub-sections locally and functionally of the diocesan judicature. They likewise increased their power by visitations, undertaking that portion of diocesan superintendence in the years in which the bishop did not visit. These courts were held during this period either by the archdeacons in person or by officials substituted, as in the case of the higher officers; but there was no general rule for the constitution of the archidiaconal courts, nor were the powers exercised by them uniform in all dioceses; being regulated in many cases by express compositions between them and the bishops. Appeals lay, according to the constitutions of Clarendon, from the archdeacon's court to that of the bishop. To the jurisdiction of the archdeacons, besides the ordinary ecclesiastical causes, belonged the immediate care of the fabric, furniture, &c. of the parish churches. To the archdeacons also belonged the holding of the rural chapters, which, according to Lyndwood (*Lib. I., c. 2., p. 14., ed. 1525, fo. 10 v.*) were held; the ordinary ones from three weeks to three weeks, and the principal ones every quarter, and were attended by the beneficed clergy for the discussion of arduous business.

The judicial business of the rural deans was preparatory for the sessions or visitations of the archdeacons, and they were employed in the execution of their orders where they could be enforced by ordinary spiritual agency. Their functions were ministerial to the archdeacons, and their arrangements, as well as those of the rural chapters, were matters rather of custom than of canon law; nor, although subordinate work in the nature of presentments, &c. was transacted by their means, is their action entitled to the name of jurisdiction or their assemblies to the designation of courts.

### III.—FROM THE REFORMATION TO THE YEAR 1832.

#### 1.—General view of the legislation of the Reformation to the reign of Elizabeth.

Before entering on an examination into the effects produced by the Reformation statutes on ecclesiastical judicature, it will be necessary to state, in the proper order and relation, the several steps of legislation by which those statutes were made law. And this will be best done by taking the four reigns, within which the great changes in church and State took place, separately.

The era of legislative change begins with the Parliament which met, coincidently with the fall of Cardinal Wolsey, and the appointment of Sir Thomas More as Chancellor, on the 3rd of November 1529. The first session was a short one, lasting only to the 17th of December. Both the Parliament and Convocation were employed on questions of ecclesiastical reform; the need of reforms was the subject of the Chancellor's speech at the opening of Parliament,

and three days after a memorial was presented in the House of Commons in which the complaints of the laity were embodied; this memorial contained six points: on the abuses of probate, of mortuaries, of clerical farming, of abbots' tanneries, of non-residence and pluralities. On this petition were framed Bills, three of which became law, 21 Hen. VIII. c. 5. on probate, 21 Hen. VIII. c. 6. on mortuaries, 21 Hen. VIII. c. 13. on pluralities. Of these the Bills on probate were opposed by the bishops, the other two by the inferior clergy, but they were carried at the king's wish, after a conference by committee of the two Houses, which was so packed that by an agreement of the lay Lords with the Commons the votes of the prelates were outnumbered. This was the first vote of reform, and in it the king made use of the anti-clerical feeling in the House of Commons, but without any distinct reference to the questions at issue with the papacy. In the general pardon, however, which was issued in this Parliament (21 Hen. VIII. c. 1.), offences against the statute of præmunire were excepted, and thus the weapon which had been effectively used for the destruction of Wolsey was kept in reserve for further use against both clergy and laity.

The Convocation which sat contemporaneously with this session of Parliament was employed in drawing up constitutions, on the provision for clerks to be ordained, for reform of clerical manners, excessive apparel, on simony, on appropriations, on the abuses of the regulars; and in the latter sessions in discussions on the treatment of heresy.

The financial measure of the year was the release of the loan raised for the king in 1525, which was agreed to by the clergy on the 22nd of November, and forms the 21 Hen. VIII. c. 24. The session, according to the anticipations of the Imperial Ambassador, was intended to be marked by extortion from the clergy, who were too rich to please either Lords or Commons; but the purpose seems to have been carried no further than was compatible with the feelings of the Commons, who were willing to co-operate with the king in the remedy of minor abuses, but were sensitively suspicious as to any increase of taxation, and were with difficulty prevailed on to agree to the remittal of the loan.

The Parliament, prorogued on the 17th of December 1529, did not meet again for dispatch of business until the 16th of January 1531; in the interval the king held assemblies of lords and of the clergy in June, September, and October 1530, which discussed the repression of heresy, the making of a new translation of the Scriptures, and measures by which the king's divorce, the burning question of the time, might be settled in England; the question of the præmunire was again raised, and great apprehensions were entertained as to the proceedings that must follow the meeting of Parliament.

On the 16th of January 1531, the Parliament, and on the 21st the convocation of Canterbury, met: the king's threat of præmunire had the effect of forcing the clergy to vote a subsidy of 100,000*l.*, and, in the form of grant by which the money was voted, they were compelled to insert the recognition of the king as supreme head of the Church of England, so far as is allowed by the law of Christ. This concession, which was the result of much deliberation and consultation, was embodied in the grant under the date of March 22nd, but had been made by a unanimous vote of both Houses on the 11th of February. The rest of the session of convocation was employed in the discussion of reforms on the ordination of curates, the treatment of priests convicted, admission of clergy by proctors, reform of manners, reform of apparel, and the treatment of heretics; other proposals were made on the abuses of privileged places, on the avoiding of idleness, on the appointment of schoolmasters, and a uniform method of teaching, on inquiry into heresy, on simony, and on the treatment of heretics. The convocation was on the 1st of April prorogued to the following October, and did not sit for deliberation until January 1532.

The Parliament in this session (22 Hen. VIII.) passed no Act of ecclesiastical reform, except one on sanctuaries (c. 14), and the pardon of the clergy for the præmunire (c. 15), which was purchased by the ecclesiastical grant. This latter was not passed without some demur, and was accompanied by a corresponding pardon for the laity, for which no consideration was given. The proceedings in convocation were on the whole more important and conspicuous than those of Parliament, of which no journals are preserved, and to which little public notice seems to have been given. The matter of the divorce was kept out of discussion in both assemblies, but the negotiations were being carried on with the pope, the translation of the Scriptures was proceeding, and a general uneasy feeling as to coming events is traceable in the letters of the time. The convocation of York, under the leadership of Bishop Tunstall, objected to the form of recognition in the Canterbury grant, and only voted their money under protest,



which led to an important discussion with the king, to be noticed hereafter.

On the last day of the session of Parliament the Chancellor laid before the Lords and Commons the documents, opinions of universities, and other papers on the king's marriage, which were to be food for reflexion and discussion during the vacation. The Parliament was prorogued on the 31st of March.

The session of 1532 (23 Hen. VIII.) began on the 15th of January and sat, with short prorogation for Easter, until the 14th of May, convocation sitting for the same time. The latter body was employed on the same points of reform as had occupied the preceding session, and probably in concerting measures of defence against the attack upon the church, which was now known to be impending; and in reference to which Archbishop Warham, on the 24th of February, drew up a formal protest against all statutes to be passed in the present Parliament which should be prejudicial to the ecclesiastical or papal power. In Parliament the first part of the session was marked by financial disputes as well as by the threatening attitude of the king towards the clergy, and, resulting partly from both these causes, by the introduction of the Bill which withdrew from the Church of Rome the payment of annates, and made provision for the confirmation and consecration of bishops within the realm. This Act (23 Hen. VIII. c. 20.) seems to have been discussed in the convocation, and to have been so far approved that a petition on the subject was delivered as a petition of convocation in the House of Lords; but this is not clearly stated on the petition itself, which bears no date. The Bill was presented, however, to Parliament by the king, as expressing the wish of the people, about the 14th of February, and was opposed by the prelates. After two visits from the king the Lords, about the 18th or 19th of March, passed the Bill by the almost unanimous votes of the lords temporal and in opposition to the unanimous vote of the bishops. This Act is remarkable as the first open blow struck in Parliament at the papacy; it did not, however, bring matters to a crisis, as it contained a clause suspending its operation until confirmed by the king in letters patent, which was not done until July 9th, 1533.

On the 18th of March, the day apparently on which this Bill passed the Lords, the Commons, at the instigation of the king, presented to him a bill of complaints against the abuses of the ecclesiastical courts, which is the starting point of a new series of statutes. This bill was laid by the king before the archbishop, who presented it in convocation on the 12th of April, the first day of meeting after Easter. It contained articles of indictment against the courts, which may be arranged under the following heads:—

1. The making of canons without royal or lay assent in derogation of royal authority.
2. The limitation of the number of proctors in the courts of arches and audience.
3. Troublesome proceedings in the enforcing of discipline.
4. The heavy fees of the ecclesiastical courts.
5. The fees exacted by the clergy for sacraments and sacramental ordinances.
6. The trouble and expense of testamentary proceedings.
7. Exactions at institution and induction.
8. Misuse of patronage.
9. Number of holy days.
10. Proceedings ex officio, accusation, and imprisonment.
11. The impossibility of recovering damages for false charges.
12. The subtle entrapping of men into error by examination into heretical statements.

To this series of complaints both houses of Convocation prepared careful answers, which were presented to the king about the 27th of April, and were declared by him to be insufficient; and a fortnight after the king sent to the Convocation for approval the three propositions which are known as the *submission of the clergy*, by which it was conceded that no legislation by the clergy should be valid without the king's assent and his permission for its execution, that the reform of ecclesiastical laws should be undertaken by a royal commission of clergy and laity, and that in the meanwhile the ancient laws of the church not inconsistent with the laws of God and the king should, with the king's approval, stand good.

After a good deal of discussion these points were agreed on by the Convocation on the 15th of May with some modifications, the most important of which was the statement, introduced parenthetically, that the Convocation had been and could be assembled only by the king's commandment. No legislation in Parliament followed immediately upon this; the Parliament, in fact, was prorogued about the same date, but a statute had passed during the discussion

which restricted the archbishop's power of hearing causes of first instance. This was the statute of citations (23 Hen. VIII. c. 9.), which limited the heretofore recognised power of the archbishop to summon parties outside their own dioceses, except on appeals, or after letters of request, or in case of the negligence of the diocesan bishops. This power of the archbishop which was, as has been stated, regarded in the 12th century as a result of his legatine authority, was felt to be oppressive. This statute of citations seems to have been the only direct statutory result of the complaint of the Commons, and was perhaps the residuum of a series of more stringent measures in which the king was opposed in Parliament not only by the bishops but by his own chancellor, who resigned immediately after the Submission of his clergy was presented, unquestionably in consequence of his inability to agree to further changes.

The events of the second half of the year 1532 greatly accelerated the process of change and facilitated the execution of the growing designs of the king. Archbishop Warham's death in August left the appointment to the primacy practically in the king's hands, and his visit to France in the following October had for one result the producing a conviction that he might safely disregard all remaining scruples as to his matrimonial relations. He married Ann Boleyn either in the November or in the January following, and determined to appoint Cranmer, who was thoroughly committed to the policy of divorce, to the see of Canterbury. In the Parliament and Convocation which met in February 1533, the designs which had been broken off in 1532 by More's resignation were resumed, and some of the most important alterations in ecclesiastical judicature were initiated. The deliberations on the divorce and on the alteration of the law of appeals seems to have proceeded *pari passu*; the necessity for immediately proceeding with the statute of appeals arising from the importance of preventing Katharine of Arragon from attempting to invalidate the marriage of the king with Ann Boleyn. The question of the validity of the king's first marriage was laid before the Convocation of Canterbury on the 26th of March: the two points, the papal power of dispensing with the marriage with a brother's widow, and the fact of the reality of Arthur's marriage with Katharine, were voted upon by the theologians and canonists of the two Houses, and the majority was in the king's favour. This was certified by the Canterbury Convocation on the 5th of April, and in that of York on the 13th of May. On the 23rd of May Cranmer as primate and legate declared the nullity of the King's first marriage.

The legislation on appeals (24 Hen. VIII. c. 12.) was in the meanwhile proceeding through Parliament. The statute is known to have been laid before the Parliament on the 15th of March, and to have been badly received by the Commons, who, for many reasons were averse to a breach with the pope. On the 31st of March the Commons were still obdurate, but before the 10th of April they had agreed to pass the Bill. According to the dispatches of the Venetian Ambassador, on the 30th of March and on the 2nd of April the Convocation was employed in discussing a measure for the abrogation of the pope's power. These notes warrant the belief that in some shape the principle of the statute was laid before the clergy at this period of the session, their practical adhesion to it having been regarded as expressed in the recognition of the king's headship in 1531. The Parliament was prorogued on the 7th of April and Convocation on the 8th, to meet again in June, but they merely met to be prorogued, and the work of the session was over. The statute of appeals was the only important Act of the session.

It is important to observe that all terms with the papacy were not yet broken off, and that the king had not finally renounced his hope of having his second marriage recognised at Rome. Although the statute of appeals prevented Katharine of Arragon from continuing her appeal, the king on the 29th of June appealed from the imminent sentence of the pope to a future general council, and on the 9th of July issued the letters patent for the execution of the statute of 1532 on the annates. On the 11th of July the pope annulled the second marriage, and the breach openly became irreparable. No further session of Parliament was held, however, during the remainder of the year, and no important measure was being urged on outside.

The legislation of the following year is still closely complicated with the business of the royal marriage. The proceedings of the Parliament may be traced clearly by means of the Lords' journals, and the light thrown by the same authority on the proceedings of Convocation is supplemented by the careful notices and reports of the Imperial Ambassador. The Parliament 25 Hen. VIII., sat from Jan. 15th to March 30th, and the Convocation



from Jan. 16th to March 31st, on the Friday in each week. The following are the titles of the important Acts with the dates of their discussion in the several Houses so far as can be ascertained.

1. 25 Hen. VIII. c. 14. An Act for the punishment of heresy. A Bill was brought up from the Commons on the 26th of March, read once and committed to the Chancellor, and read again on March 27th. On the 28th another Bill was introduced into the Lords and read three times, and on the 30th this Bill was brought up from the Commons as passed. This Act was based on the petition of the Commons in 1532, and is primarily intended to limit the definition of heresy as formerly cognizable under the canon law; it also repeals the statute 2 Hen. IV. c. 15, but confirms the other heresy Acts and fully recognises the jurisdiction of the ordinaries. Its actual operation is confined to the previous stages of investigation before the trial before the ordinary, which is assumed to be final. There is no reference to the right of appeal or to any right of discretion as to the issuing of the royal writ de heretico comburendo. Other measures on heresy seem to have been brought forward in the Parliament (letter of March 30th), but possibly the note of the ambassador refers to the abortive Act mentioned above.
2. 25 Hen. VIII. c. 19. An Act for the submission of the clergy to the King's Majesty. This Bill is based upon, and incorporates in its language, the submission of the clergy made in 1532, and also makes provision for appeals in ecclesiastical causes, supplementary to and partly superseding the statute of appeals, 24 Hen. VIII. c. 12. It was brought up from the Commons on the 27th of March, and on that day read twice by the Lords; on the 28th it was read a third time and an additional proviso made by the Lords, and on the 30th it was brought up from the Commons and passed; the same day the Parliament was prorogued. The proviso added by the Lords on the 28th and agreed to by the Commons on the 30th appears from the statute book to be clauses 6 and 7 of the printed Act; providing for the jurisdiction in appeals from exempt places, and for the continuance of the old canon laws until the revised form has been completed. It is a moot question whether this Act received the consent of Convocation. (1) The 1st, 2nd, 3rd, and 7th clauses, being framed on the submission of 1532, had of course the sanction of the Convocation, and appear from the petition given by Wilkins, Conc. III. 70, to have been again accepted in the form of this statute by that body. (2) The 4th, 5th, and 6th clauses, in which lies the gist of the Act, are no part of the submission of the clergy or of the petition just referred to in which the submission is rehearsed; but it appears from the dispatch of the Imperial Ambassador that on the 25th of March the clergy were employed in discussing and accepting the Bills agreed on in the Commons against the papal power. Of those Bills this was one of the most important, and, as it is brought into the Lords on the 27th, it may not improbably be supposed to have been forced through the Convocation on the 25th, in spite of the opposition mentioned by the ambassador. If the Bill at that time contained only the rehearsal of the submission, it is difficult to say on what ground the opposition could have been based. The petition as printed by Wilkins bears evidence of the addition of a final proviso during the proceeding through Convocation, which is one of the two that appear from the statute book to have been added by the Lords. It should be added that further reference to the MS. of the statute book, and if possible to the documents used by Wilkins, might help to clear up this point. (3) The evidence on this important point is not decisive; but there is no evidence that the clauses 4, 5, and 6 were not laid before the clergy, and there is evidence that on the 25th of March they were prevailed on to accept some repulsive legislation. The form in which this legislation was forced upon them may or may not have been the choice between acceptance and rejection of a drawn Bill. On the whole it seems most probable, on the analogy of the king's other proceedings at this date, that in some shape or other the consent of the clergy was given to this statute as a whole. The further bearing of the statute must be considered below.
3. 25 Hen. VIII. c. 20. An Act restraining the payment of annates, &c.; an Act which confirms,

amends, and supplements the Act of 23 Hen. VIII. c. 20. An Act on this subject was brought up from the Commons on the 7th of February, read a second time on the 11th, and sent to the king; and thrown out by the Lords on the 27th, on which day a new Bill on the same subject was read once. This Bill had a second reading on March 3rd, was ordered to be ingrossed on the 5th, and read a third time on the 9th; on the 16th it was brought up from the Commons and passed. There is no direct evidence that this Act was put before Convocation, but that body, whose records are not preserved, had regular sessions during the time that the Bill was in progress, and the enactments which it contains relative to the consecration of bishops are more in conformity with the ancient law than those of the Act which it amends.

4. 25 Hen. VIII. c. 21. An Act for the exoneration of exactions paid to the see of Rome. This Act was brought up from the Commons on the 12th of March, read March 13 and 14th, and delivered to the chancellor; on the 19th it had a third reading; on the 20th it was read a fourth time, with an additional proviso, sent down to the Commons, returned, and passed. This also may have been one of the Bills forced through the Convocation on the 25th. It required the king's confirmation by letters patent, which was given on April 7th.
5. The other ecclesiastical Acts of the session, the Act for the deprivation of Campegio and Ghinucci, 25 Hen. VIII. c. 27.; that for the ratification of the king's marriage and establishment of the succession, c. 22. (in which the confirmation of the archbishop's sentence by the Convocations is mentioned); and the other less important Acts in which ecclesiastical questions are touched, as they do not bear on the question of jurisdiction, need not be dwelt upon.

Before, however, closing the history of this session, it is important to observe that on March 31st, the day on which the Convocation of Canterbury was prorogued, a formal answer was returned to the question propounded by the king, "Has the Roman pontiff any greater jurisdiction in this realm of England conferred upon him by God in Holy Scripture than any other foreign bishop?" The clergy answered in the negative, and the same answer was given by the Convocation of York on the 5th of May. This was followed up by the requiring from the clergy generally, and the universities, of a form of submission signed by them singly and severally, in which the recognition of the king as head of the Church of England, the renunciation of the pope's authority, and adhesion to the succession as determined in the Act lately passed, are practically embodied.

There was a second session of Parliament in 1534; from November 3 to Dec. 19. The journals of the Lords for this session are lost, and those of the Convocation afford no data as to the passing of the Bills in Parliament. The only Act of great importance is—

- 26 Hen. VIII. c. 1. An Act concerning the king's highness to be supreme head of the Church of England, and to have authority to reform and redress all errors, heresies, and abuses in the same.

This Act is based on the recognition of 1531 and the recent acts of submission by the individual clergy. Its bearing on the question of the supremacy will be noticed further on. We learn from the dispatch of Chapuys that it passed on the 17th of November.

The other ecclesiastical Acts were, c. 2., the Act ratifying the oath to the succession; c. 3., the Act concerning the payments of first-fruits and an annual tenth to the king; c. 14., an Act for nomination and consecration of suffragans.

At the first meeting of Convocation, Nov. 11, the archbishop changed his style from "*apostolicæ sedis legatus*" to "*metropolitanus*." On the 15th of January 1535 the king proclaimed his title "*in terra supremum caput Anglicanæ ecclesiæ*." On the 9th of June 1535 he proclaimed the abrogation of the usurped power of the pope, and sometime during the year he conferred on Cromwell the office of vicar-general in ecclesiastical causes and vicegerent, by a commission which is not forthcoming, but which is described in documents issued by Cromwell (Burnet Ref. II., App. 303). (Wrightesley gives July 18, 1536, as the date, but this is certainly too late.) In the autumn the universities were visited; the teaching of the Sentences and Decrees, and the degrees in canon law were forbidden.

There was no session of Parliament in 1535, and in the first of the two sessions of 1536 the only important Act is 27 Hen. VIII. c. 15, which empowered the king to name 32 persons to revise the canon laws as provided in the Act 25 Hen. VIII.



c. 19. The new parliament, which followed the fall of Anne Boleyn and passed new Acts of succession, was marked by a final statute (23 Hen. VIII. c. 10) against the pope's authority, supplementary to all those that had gone before it, and containing a provision saving the ceremonies, uses, and other laudable and politic ordinances for the tranquillity, discipline, concord, devotion, unity, and decent order heretofore in the Church of England used, instituted, taken, and accepted.

With this statute of 1536 the more important permanent work of the Henrician reformation, so far as regards judicature, may be said to have closed, but some further illustration of the king's policy and principles may be drawn from the later measures of the reign. In 1539 the Act of Six Articles was passed; "An Act abolishing diversities of opinions;" 31 Hen. VIII. c. 14. This Act proceeded from the king's especial desire, announced in the House of Lords by the Chancellor on the 5th of May, on which day a committee of bishops, with Cromwell at the head, was named to examine the several opinions in question. On the 16th, the Duke of Norfolk, finding that the committee were not likely to report, proposed six articles on which uniformity of belief should be enforced; and on the 30th the king signified his pleasure that two alternative Bills should be prepared. On the 2nd of June the opinion of Convocation was demanded on the six articles, and, their answers having been given, the Bill rehearsing their agreement was read on June 7th, June 9th, and June 10th, sent down to the Commons, and, with a proviso added, passed the final stage on the 16th.

In 1540 the validity of the king's marriage with Anne of Cleves was, in conformity with an address of the two houses to the king, referred to the clergy convoked to the Parliament, and the same day, July 6th, by commission from the Crown, the whole clergy were convoked in a universal synod to declare their opinion upon it. This opinion was given on the 9th of July, and the instrument drawn up thereupon was inserted in the Act of Parliament 32 Hen. VIII. c. 25. which dissolved the marriage. In the same session was passed an Act concerning Christ's religion (32 Hen. VIII. c. 26.), which declared that the king had appointed the archbishops and sundry bishops and doctors of divinity to declare the articles of the Christian faith, and enacted that all definitions according to God's word and the gospel, by the king's advice and confirmation by letters patent under the great seal, made by the said archbishops, bishops, and doctors now appointed, or other persons hereafter to be appointed by his royal Majesty, or else by the whole clergy of England, should have the force of law. There is no record of the proceedings of Convocation for this year.

In 1542 a Bill was introduced into the House of Lords on the 15th of March, and read once, "that laymen may exercise jurisdiction ecclesiastical." This Bill had on the 10th of March been laid before the Convocation, in the records of which it is thus described: "a Bill that chancellors might be married men and, having wives and children, might have power to excommunicate and suspend, and to promulge all censures of the church as priests do, and that they and their registers should have their offices for term of life, for sufficient fees of the ordinaries to find them and their families, and that an officer deputed, having the king's seal or patent, should continue for term of life without change or removing." This Bill was regarded by the bishops as not fit to be read in Parliament and the Lord Chancellor was moved to stop it. It appears to have been read on the 15th, and to have proceeded no further at the time; the chancellor no doubt complying with the request of the prelates.

In 1543 the Act for advancement of true religion and for the abolishment of the contrary (34 & 35 Hen. VIII. c. 1.), described in the journals as the Act for abolishing erroneous books, is mainly based on the resolution of the Convocation of the preceding year.

In 1544 the Act 35 Hen. VIII. c. 16. for the examination of the canon laws, is based on the petition of the Convocation, Feb. 23, 1542. A Bill to this purpose was introduced into the House of Lords Jan. 18, and read Jan. 19 and 22; on the 24th the Lords "deliberandum censent," which seems to be equivalent to rejection. On the 1st of February the matter was debated in secret in Convocation. Another Bill on the 7th of February was brought into the Lords and read; it was read a third time and sent to the Commons on the 24th, and on the 8th of March brought up and concluded.

In 1545 the Bill that doctors of the civil law may exercise ecclesiastical jurisdiction became law, being read in the Lords Dec. 16 and 17, and agreed to; on the 22nd it was brought up from the Commons and passed (37 Hen. VIII. c. 17). A Bill on heresy brought forward on the 27th of November and read, five times, and agreed to on Dec. 5,

was sent to the Commons, but appears no more after that date. No Parliament sat in 1546, and the session of 1547 ended with the death of the king before any Bill had become law.

We now proceed, before following up the history of the later statutes of the Reformation period, to examine the meaning and bearing of the Acts already enumerated. For this purpose they may be grouped under three heads:—

1. Those that assert and define generally the relation of the king to the Church of England.

2. Those that determine his relation to the administration of the ecclesiastical law; and

3. Those that immediately concern the constitution of the ecclesiastical courts.

Under the first head fall the Recognition of the royal supremacy accepted by the Convocations in 1531, the several acts of individual submission enacted in 1534, and the Act 26 Hen. VIII. c. 1., which passed in the autumn of the same year.

Under the second head fall the submission of the clergy in 1532, the preambles of the statutes of appeal, 24 Hen. VIII. c. 12., and submission, 25 Hen. VIII. c. 19, with the statute of citations, 23 Hen. VIII. c. 9, and the statutes of heresy, 25 Hen. VIII. c. 14., for the advancement of true religion, 34 & 35 Hen. VIII. c. 1., concerning Christ's religion, 32 Hen. VIII. c. 26., and the several Acts concerning the revision of the canon law.

Under the third head fall the precise legislation of the 24 Hen. VIII. c. 12, 25 Hen. VIII. c. 19, 37 Hen. VIII. c. 17.

1. The title accorded to the king in the act of Recognition in 1531 is stated thus, "*ecclesiæ et cleri Anglicani cuius singularem protectorem, unicum et supremum dominum, et, quantum, per Christi legem licet, etiam supremum caput, ipsius majestatem recognoscimus.*" The limiting words, "*quantum per Christi legem licet*" were adopted, after much discussion, in preference to the form "*ecclesiæ et cleri Anglicani cuius protector et supremum caput is solus est,*" as it stood in the original draft; in preference to the form, "*cujus protector et supremum caput post Deum is solus est,*" which was proposed by the king, and after the rejection of the suggestion of Bishop Tunstall, "*in temporalibus post Christum.*" The form finally adopted was proposed by Archbishop Warham, and must be supposed to have had the approval of the chancellor Sir Thomas More.

The title as recognised in the individual submissions of the clergy in 1534 is given, without limiting words, "*quod prædictus rex noster Henricus est caput ecclesiæ Anglicanæ;*" but the Act of 26 Hen. VIII. c. 1., "the king's grace to be authorised supreme head," although in the preamble it uses the form without limitation, in the enacting clause adopts the form "the only supreme head on earth of the Church of England." This form, although it does not agree with either of the preceding recognitions, must be regarded as explanatory and supplementary of both. The king was himself aware of the difficulties that attended the use of the form, and in a letter addressed to Bishop Tunstall and the York Convocation, which had demurred to the form adopted by the province of Canterbury, urged that words should be considered "as the expression of the truth in convenient speech and sentences without over much scruple of super perverse interpretations;" that the title should not be strained so as to imply a denial of the sole and supreme lordship of Christ, or to claim a headship of the mystical body of Christ, or as more than meaning headship of the clergy of England; he insists that the headship is not limited to temporal matters, but that "all spiritual things, by reason whereof may arise bodily trouble and inquietation, be necessarily included in princes' power;" that the spiritual things, the ministration of which is by Christ committed to the clergy, are not so far extended as the modern use of the word spiritual assumes, but that as to persons, property, acts, and deeds the clergy are under the king as head; that this headship does not imply superiority in things in which emperors and princes obey bishops and priests as doers of the message of Christ and his ambassadors for that purpose; the addition *in temporalibus* would be superfluous "as men, being here themselves earthly and temporal, cannot be head and governor to things eternal." If spiritualities "refers to spiritual men, that is, priests, clerks, their good acts and deeds worldly, in all this both we and all other princes be at this day chief and heads." He alleges, as illustrations of the existing headship, the Convocations assembled under royal authority, the fealty of the bishops, licence and assent to the election of abbots, cognizance of certain offences of the clergy; "so as in all those articles concerning the persons of priests, their laws, their acts, and order of living, forasmuch as they be indeed all temporal and concerning this present life only, in those we, as we be called, be in



" deed in this real *caput* and, because there is no man " above us here, be indeed *supremum caput*." As to spiritual things, as sacraments, they have no head but Christ, who instituted them, by whose ordinance they are ministered by the clergy who for the time they do that, and in that respect, "*tanquam ministri versantur in his quæ hominum potestati non subjiuntur, in quibus si male versantur sine scandalo Deum ultorem habent; si cum scandalo hominum cognitio et vindicta est;*" the prince being the chief executor of this. He explains the use of the form "*quantum per Christi legem licet,*" and objects to any other limitation as superfluous; and urges that the great divines, the Bishops of Rochester, London, St. Asaph, and others, as well as the great lawyers, the Archbishop and Bishop of Bath, had accepted the form.

This explanation, which is very important as Henry's own interpretation of the title he assumed, is curiously reticent on the point in which at the moment the title was most important, that is the exclusion of the papal authority as supreme. The king had not formally broken off his relations with the pope, and it is quite certain that neither Warham, Fisher, nor More could have accepted the words if they had necessarily implied a renunciation of papal authority. This was probably understood to be covered by the words of compromise, "*quantum per Christi legem licet,*" which each party might for the time interpret in their own way, and Warham and More might interpret as implying no greater negation of papal power than was immemorially part of the legal system of England.

But the idea of the supremacy, after the formal vote in 1533, that the pope has by Holy Scripture no greater power in England than any other foreign bishop, was very much extended. In the preamble of the statute of appeals it is laid down that "this realm of England is an Empire, and so hath been accepted in the world: governed by one supreme head and king, having the dignity and royl estate of the imperial crown of the same, unto whom a body politic, compact of all sorts and degrees of people divided in terms and by names of spirituality and temporality been bounden and owen to bear next to God a natural and humble obedience; he being also institute and furnished by the goodness and sufferance of Almighty God with plenary, whole and entire power, pre-eminence and authority, prerogative and jurisdiction, to render and yield justice and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates, and contentions happening to occur, insurge, or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world; the body spiritual whereof having power when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared interpreted and showed by that part of the body politic called the spirituality, now being usually called the English Church, which always hath been reputed and also found of that sort that both for knowledge, integrity, and sufficiency of number it hath been always thought, and is also at this hour sufficient and meet of itself without the intermeddling of any exterior person or persons to declare and determine all such doubts, and to administer all such offices and duties as to their rooms spiritual doth appertain, for the due administration whereof, and to keep them from corruption and sinister affection, the king's most noble progenitors and the antecessors of the nobles of this realm have sufficiently endowed the said church both with honour and possessions; and the laws temporal, for the trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace without rapine or spoil, was and yet is ministered, adjudged, and executed by sundry judges and ministers of the other part of the said body politic, called the temporality, and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other."

In this definition of his position, which is clearly the work of the king himself, the exclusion of the papal authority is evidently assumed, and the position of the king as head of the conjoint body is elaborated with much care; the temporality is not made simply equivalent to the State, and neither part of the body politic is set up as superior to the other. The definition could not have now been accepted by Warham and More, and could not be pressed upon the clergy as an explanation of their form of recognition without the additional negation of papal authority; but further than this it does not seem to carry much more meaning than the king's explanation given in the letter to Tunstall of 1531 quoted above.

The unlimited recognition exacted from the clergy in the summer of 1534, in which the words "*quantum per Christi legem licet*" are omitted, and the denial of the papal authority inserted, may be interpreted either by the

document that preceded or by that which followed; *i.e.*, either by 24 Hen. VIII. c. 12., or 26 Hen. VIII. c. 1., but, as it has no legislative force, it need not be carefully scrutinised; and we pass on to the definition of the latter Act, which enacts that "the king our sovereign lord, his heirs and successors, kings of this realm, should be taken, accepted, and reputed the only supreme head in earth of the Church of England called Anglicana Ecclesia, and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of the supreme head of the same church belonging and appertaining; and that our said sovereign lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit, repress, redress, reform, correct, restrain, and amend all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which by any manner spiritual authority of jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended most to the pleasure of Almighty God, the increase of the virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm, any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

In this Act, therefore, are assigned to the headship two sets of functions, one indeterminate and supposed to be inherent in the title of head; the other determinate and authorised by the statute, which by recognising the right bestows the authority to visit, repress, reform, order, correct, restrain and amend all ecclesiastical mischiefs whatsoever. The second branch of this definition belongs to our second division below; for the present it is necessary to follow up the meaning of the *headship*.

This will be best done in the words of the bishops of 1536 and of the king himself in 1543:

"The truth is, that God constituted and ordained the authority of Christian kings and princes to be the most high and supreme above all other powers and offices in the regiment and governance of his people, and committed unto them, as unto the chief heads of their commonwealths, the cure and oversight of all the people which be within their realms and dominions without any exception. And unto them of right and by God's commandment belongeth not only to prohibit unlawful violence, to correct offenders by corporal death or other punishment, to conserve moral honesty among their subjects, according to the laws of their realms, to defend justice and to procure the public weal and the common peace and tranquillity in outward and earthly things, but specially and principally to defend the faith of Christ and his religion, to conserve and maintain the true doctrine of Christ and all such as be true preachers and setters forth thereof, and to abolish all abuses, heresies, and idolatries which be brought in by heretics and evil preachers, and to punish with corporal pains such as of malice be occasioners of the same; and, finally, to oversee and cause that the said priests and bishops do execute their said power, office, and jurisdiction truly, faithfully, and according in all points as it was given and committed unto them by Christ and his Apostles; which notwithstanding, we may not think that it doth appertain unto the office of kings and princes to preach and teach, to administer the sacraments, to absolve, to excommunicate, and such other things belonging to the office and administration of bishops and priests; but we must think and believe that God hath constituted and made Christian kings and princes to be as the chief heads and overlookers over the said priests and bishops, to cause them to administer their office and power committed unto them purely and sincerely; and, in case they shall be negligent in any part thereof, to cause them to supply and repair the same again. And God hath also commanded the said priests and bishops to obey with all humbleness and reverence all the laws made by the said princes, being not contrary to the laws of God, whatsoever they be, and that not only *propter iram* but also *propter conscientiam*." Institution of a Christian Man; ed. Lloyd, "Formularies of Faith, &c.," pp. 120, 121.

This passage is for the most part reproduced verbatim in the "Necessary Doctrine and Erudition," *ibid.*, pp. 286, 287, which, however, contains the following important variation: "and finally to oversee and cause that the said bishops and priests do execute their pastoral office truly and faithfully, and specially in those points which by Christ and his Apostles was given and committed unto them; and in case they shall be negligent in any part thereof, or would not diligently execute the same, to cause them to redouble and supply their lack; and if



"they obstinately withstand their prince's kind monition, and will not amend their faults, then and in such case to put other in their rooms and places. And God hath also commanded the said bishops and priests to obey with all humbleness and reverence both kings and princes and governors, and all their laws, not being contrary to the laws of God, whatsoever they be; and that not only *propter iram* but also *propter conscientiam*, that is to say, not only for fear of punishment but also for discharge of conscience."

To this may be added from the "Necessary Doctrine, &c.," *ibid.*, p. 248, the following extract from the article on the Holy Catholic Church:—

"It is to be noted that this Church of England and other known particular churches, in which Christ's name is truly honoured, called on, and professed in faith and baptism, be members of the whole Catholic church, and each of them by himself is also worthily called a Catholic church when they merely profess and teach the faith and religion of Christ according to the Scriptures and the Apostolic doctrine. And so every Christian man ought to honour, give credence, and to follow the particular church of that region so ordered (as afore) wherein he is born or inhabiteth. And as all Christian people, as well spiritual as temporal, be bound to believe, honour, and obey our Saviour Jesus Christ, the only head of the Universal Church, so likewise they be, by his commandment, bound to honour and obey, next unto himself, Christian kings and princes which be head governors under him in the particular churches: to whose office it appertaineth not only to provide for the tranquility and wealth of their subjects in temporal and worldly things, to the conservation of their bodies, but also to foresee that within their dominions such ministers be ordained and appointed in their churches as can and will truly and purely set out the true doctrine of Christ and teach the same, and to see the commandments of God well observed and kept, to the wealth and salvation of their souls."

Up to this point the king does not claim directly to exercise ecclesiastical authority, but to authorise and enforce the proper exercise of it. Nor does he claim to be the source of all authority, but to licence the employment of it, over and besides that part of it which is given by the word of Christ to the bishops. It may be questioned whether he ever goes any further and extends his area of authorisation and enforcement within that given by the word of Christ to the bishops, coming, that is, between Christ and his ministers, and assuming that their authority passes through him.

The statute 37 Hen. VIII. c. 17, "a Bill that doctors of the civil law being married may exercise ecclesiastical jurisdiction," contains a definition of the royal supremacy, which, as might be expected, is in advance of all claims that preceded it, declaring that the king as supreme head on earth of the Church of England has power, not only to correct, punish, and repress all heresies, errors, vices, sins, &c., but "to exercise all other manner of jurisdictions commonly called ecclesiastical jurisdictions, and that the archbishops, bishops, archdeacons, &c. have no manner of jurisdiction ecclesiastical but by, under, and from the king; and that to him by Holy Scripture all authority and power is given to hear and determine all causes ecclesiastical and to correct vice and sin whatsoever; and to all such persons as the king shall appoint thereto."

This statement, which is based on no legislative Act, or recognition, but is simply an expansion of the title of supreme head, in a sense which, applied to the pope's supreme headship, would have been repudiated, is, of course, in full agreement with the theory expressed in the commissions granted by the king to Bonner and Cranmer; but, as an interpretation of Holy Scripture, must take its place among the other false preambles of Henry's statutes, unless a restricted meaning be put on the word jurisdiction. In its barest sense, however, it commended itself to Edward VI. and his advisers.

The power claimed by the king under this title may be regarded as including three things:—

1. The free exercise of royal authority exclusive of the interference of the see of Rome.
2. The reversion of the authority claimed by the see of Rome so far as that claim had included powers which the king was capable of executing, whether the claims of Rome had been usurpations on the king or on the national church.
3. The possession of the character of supreme fountain of all authority in church as well as in State, which had been claimed by some of the popes as vicars of Christ and sole and universal bishops.

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Or as an alternative statement; in four heads:—

1. The complete assertion of all the royal powers over the clergy and ecclesiastical things which the laws of England had never ceased to maintain, but which had never, or but grudgingly, been admitted by the curia.

2. The complete recovery from the papacy of all the authority over the clergy and ecclesiastical causes which had been usurped by the popes from the Crown of England, and in which the usurpation had been admitted or acquiesced in by church and nation.

3. The complete recovery from the papacy of all authority over the clergy, &c. which had been usurped by the popes from the Church of England in its metropolitan and diocesan constitution.

4. The assumption of an undefined power and authority in ecclesiastical matters, which had been assumed by the popes as supreme governors of the church, but which was strange to the ancient constitution of the church and to the liberties of nations, in the character of supreme fountain of all authority and of supreme ordinary of ordinaries.

In attempting a further analysis, the first head may be treated of as equivalent to *prerogative* (the king's ecclesiastical prerogative); the second as the *supremacy* recognised in 1531; the third as the *headship* assumed in the Act of 1534; and the fourth as the doctrine of the Vicegerency and Episcopal Commissions of 1540, the statute for Christ's religion, &c.

It is absolutely necessary that the distinction between these points should be observed, whether with reference to a growing theory of ecclesiastical absolutism in the king's mind, or as enabling us to determine the special end and aim of his several Acts of legislation. But this examination will not complete the survey of the doctrine of headship without reference to the history of the authority which Henry claimed as vested by God in Holy Scripture in godly kings and used by the kings and emperors in the best ages of the church.

In relation to this point, the legislation of the period may be arranged thus:—

1. The matters of ecclesiastical prerogative which had never been conceded by the nation to the papacy would require no legislative treatment. (The subject matter under this head might be classified, so far as it need be, under a separate division of the subject; it refers to prohibitions, patronage, stopping of appeals, &c., action of legates, staying of bulls, &c., as enumerated by Prynne\* in his view of the king's

\* NOTE.—The following is an abbreviated list of the points which are maintained by Prynne, as customary ecclesiastical rights of the kings of England, whose power, however, is "not an absolute authority to minister or to abrogate divine laws or to countenance idolatry or superstition or heresy or false doctrine."

1. To prescribe religious duty and worship.
2. To prohibit atheism and false worship.
3. To protect churches and ministers.
4. To provide for the succession and maintenance of bishops, ministers, and pastors.
5. To prescribe holydays.
6. To erect and endow bishoprics and churches.
7. To nominate, elect, approve, and confirm archbishops, bishops, &c.
8. To seize temporalities of churches during vacancies.
9. To arrest persons, confiscate temporalities, and execute in temporal courts all ecclesiastical persons for civil crimes.
10. To take aids of spiritual revenue.
11. To summon national, provincial, and parliamentary councils, to preside in them, to alter, reject, approve, and ratify canons, and to adjourn and dissolve councils.
12. To hear and determine appeals from irregular proceedings or unjust decisions of spiritual courts, and to prohibit all encroachments and usurpations of the same.
13. To forbid men going to councils outside, or holding them within the realm; to forbid debate prejudicial to the Crown, or excommunication of royal officers, and to order absolution and release.
14. To appoint vicegerents to visit the ecclesiastical estate.
15. To name bishops to perform the office of coronation.
16. To licence archbishops, bishops, &c. to make their wills.
17. To prohibit alienations, appropriations, and the ordination of villeins.
18. To admit prebendaries, and collect tenths by lay hands if the ordinaries refuse or neglect their duty in these respects.
19. To publish excommunication by charter, and order bishops to excommunicate rebels or enemies.
20. To prohibit the reception of the popes in schism unless they approve.
21. To prohibit appeals and resort to Rome.
22. To permit no legate to come to England without oath and licence.
23. To prohibit the reception of bulls.
24. To prohibit the teaching of papal canon law and to revoke and revise canons made at home.
25. To prohibit provisions and promotions of foreigners, and the collection of annates, &c., by penalties of premunire.

Dr. Cardwell (*Doc. Ann. I.*, pref. ix.) enumerates the following as the five points under which the pope's jurisdiction in England was comprised, and which were recovered from him at the Reformation: 1. He was acknowledged as chief bishop of the Christian Church, with authority to reform and redress heresies, errors and abuses within the same. 2. To him belonged the institution or confirmation of bishops elect. 3. He could grant to clergymen licences of non-residence and permission to hold more than one benefice. 4. He dispensed in the canonical impediments of matrimony. 5. He received appeals from the spiritual courts. It is necessary in considering these to distinguish between the points which were usurpations on the Crown and those which were usurpations on the National Church; also to distinguish those points which when recovered from the popes were restored to the Crown, and those restored to the Church. And it may be further

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authority.) But the legislation on heresy might, so far as the coercive authority goes, be put under this head; the restraint of heresy having always been one of the functions of the executive supporting the ordinary jurisdiction of the courts Christian.

2. To the second head belong the statutes which relate to annates, the staying of appeals, the granting of *congé d'élire* and royal assent, patronage usurped, &c.
3. To the third belong the statutes which concern the forms of election and consecration, the trying of appeals and superintendence of ecclesiastical jurisdiction by metropolitan visitations, &c., the codification of ecclesiastical laws, &c.
4. To the fourth belong the statutes which give the king authority to declare articles of faith, and to dispense in cases of ecclesiastical law, and in particular the commissions bestowed by him on his archbishops and bishops for the exercise of ordinary powers and authority, with the whole of the *extraordinary* powers exercised by the vicegerent. Of these the former were provided for (1) by the limitation of the royal authority to the declaration of doctrines, &c., defined by a body of ecclesiastical advisers, and (2) by devolution on the archbishop of dispensing powers. The latter are contained in the forms of commission in which the only limiting words are "*præter et ultra ea quæ tibi ex sacris litteris divinitus commissæ esse dinoscuntur*," i.e. the king empowers the bishops to exercise all the powers required for their historical and ordinary jurisdiction, over and above those inherent in their spiritual office.

II. The actual power and jurisdiction vested in the king by the statutes of the reign, leaving out of sight the indeterminate supremacy which existed chiefly in theory only, is best defined by the submission of 1532 and the Acts of Submission and Appeals; under which may be brought the operation of the Acts on annates and some other more or less important Acts.

#### (A.) AS TO LEGISLATIVE AUTHORITY.

The Submission of the clergy concedes to the king by way of promise, and the Act of Submission secures to him by consent of the three estates, this concession:

1. (a) That the clergy should not henceforth enact, put in force, promulge or execute any new canons or constitutions, provincial or synodal, in their convocations or synods in time coming, which convocations had been and must be assembled only by the king's high commandment of writ, unless they (b) had the king's licence to assemble, and (c) to make, promulge, and execute such constitutions.

This concession contains the admission of the king's right to licence, and consequently the right to forbid, which, however, might have been done by old prerogative—(1) the meeting of Convocation; (2) the drawing up of canons; and (3) the publication and execution.

It does not, however, concede to the king the right to draw up or impose or enforce canons not accepted by the clergy.

2. That the existing canons and constitutions should be revised by 32 persons, 16 to be of the upper and nether house of the temporality and 16 of the clergy, all to be appointed by the king, so that finally "whichever of the said constitutions should be thought and determined by the most part of the said 32 persons worthy to be abrogated and annulled should be taken away and have no force or strength."
3. That all the other constitutions which stand with God's law and the king's should stand in full strength and power, the king's royal assent being given to the same.

The second clause of the submission, agreeing to the revision of the canons, was confirmed and legalised by the 25th Hen. VIII. c. 19. s. 2; the powers conferred on the king by it were, by the 27th Hen. VIII. c. 15., renewed for three years after the dissolution of the existing Parliament, and again by 35 Hen. VIII. c. 16. for the king's life.

The third clause of the submission, providing, until the revision is completed, that, subject to the king's confirmation, the existing canons, where not conflicting with the law of God or of the realm, or the royal prerogative, should stand, is modified by the stat. 25 Hen. VIII. c. 19,

observed that all claims of royal supremacy going beyond these recovered points can only be based on the speculative or undefined supremacy claimed in 26 Hen. VIII. c. 1., and confusedly worked out by Prymne in the 25 points enumerated above, or by the argument in *Cawdrey's case*, which is overthrown by *Bishop Stillingfleet*.

and subsequent Acts by the general enactment that such canons shall still be used and executed without provision made for the previous authorisation by the king.

The authority as to canonical legislation thus recognised in the king is paralleled by the authority as to doctrinal definition recognised by the Act of Six Articles 31 Hen. VIII. c. 14.; by the Act concerning Christ's religion, 32 Hen. VIII. c. 26.; in both which a supreme authority is supposed to reside in the king acting with the advice of divines.

The exercise of the legislative authority thus claimed and used may be illustrated by the royal ordinance for the observance of holydays issued August 11, 1536, by letters patent under signet, the enacting words of which are: "it is therefore by the king's highness' authority as supreme head on earth of the Church of England, with the common consent of the prelates and clergy of this realm in Convocation lawfully assembled and congregate, among other things decreed, ordained, and established." It is observable, however, that this form, although consonant with the king's theory of his own position, is not warranted either by the submission of the clergy or by the Act of Submission, 25 Hen. VIII. c. 19.

#### (B.) AS TO POWER OF VISITATION.

The power vested in the king by 26 Hen. VIII. c. 1., of visiting and redressing abuses, was not further defined either by that or by subsequent Acts, and was practically interpreted in measures the legal and constitutional character of which is very questionable. Into these it is not here necessary to examine, but it may be sufficient to add that this visitatorial and remedial authority, like that indefinite general authority assigned to the king in the earlier part of the Act, verges and abutts closely on the undefined supremacy assumed by and henceforth denied to the popes; the most obvious illustrations in this reign (for this branch of supremacy underwent larger expansion in the reign of Edward VI.) are the visitation of the monasteries and the universities. Under Edward VI. there are visitations of dioceses and churches, and commissions for the deprivation of bishops.

#### (C.) AS TO JURISDICTION.

The Acts of Parliament which concern ecclesiastical jurisdiction are: the statute of citations; the statute of appeals; the statute of Submission; and the statute allowing married doctors of laws to be judges.

To these may be added as subsidiary those Acts of the reign which concern the law of probate, marriage, heresy, and tithes, none of which, however, materially affect the structure of ecclesiastical judicature or forms of procedure.

1. The statute of citations, 23 Hen. VIII. c. 9., forbids the citation by the provincial courts of persons resident in the dioceses of the suffragan bishops, except in cases of proved neglect, appeal, or gravamen, or at the request of the bishop whose diocesan jurisdiction is superseded. For causes of heresy the archbishop may, with consent of the ordinary, or in case of the ordinary neglecting his duty, cite the heretic. This enactment lodges and revives no special power in the Crown, but is important in relation to foregoing history as well as to subsequent practice, putting an end to the direct and immediate exercise of the archbishop's jurisdiction in all dioceses of the province except his own; a general power which (as above stated) had been regarded as legatine, and which Archbishop Peckham had consented to use under very considerable restriction. (See *Knapwell's case*, *Prynne III.* 310, and the documents in the *Concilia* referring to testamentary jurisdiction in diocesan courts.) The relations of the subditi of other bishops to the archbishops' citations are also said to be limited by the canon law in twenty-one cases; *Godolphin*, p. 19; *Peckham's letters* in *Wharton*, de epp. Lond. App. Nos. 6, 7, 8; *Strype's Cranmer*, App. No. 15. As affecting later usage this statute is the authority for the archbishops acting in his provincial court on letters of request.

This Act must have been regarded at the time not so much as an assumption of ecclesiastical authority by the Crown and Parliament as a measure of protection to the individual.

The statute of appeals is the Act 24 Hen. VIII. c. 12.: "For the restraint of appeals." The preamble of this Act has been cited already as an exposition of the theory which at that period of the Reformation was regarded as sufficiently defining the relations of the spirituality to the Crown and the temporality. After reference to the Acts of Edward III., Richard II. and Henry IV., and describing the several inconveniences arising from legal proceedings in the papal court, the Act proceeds to enact that "all



"causes testamentary, causes of matrimony and divorces, "rights of tithes, oblations, and obventions," shall be henceforth determined within the realm by such courts, spiritual and temporal, as the matter in question shall require. As also that all the spiritual prelates, pastors, ministers, and curates within this realm, and the dominions of the same, shall and may use, minister, execute, and do, or cause to be used, executed, ministered, and done, all sacraments, sacramentals, divine services, and all other things within the said realm and dominions, unto all the subjects of the same, as Catholic and Christian men owe to do notwithstanding inhibitions from or appeals to Rome in the causes aforesaid; the penalty in case of neglect or obedience to such inhibitions is a year's imprisonment, and in case of procuring such process from Rome, the penalties of *præmunire*. All appeals to Rome thus are to cease, and the course of permissible appeal is prescribed—

1. From the archdeacon or his official to the diocesan bishop.
2. From the bishop or his commissary within 15 days to the archbishop for definitive and final determination without further appeal. In the case of a suit arising within the diocese of the archbishop, appeal is allowed from the archdeacon or his commissary to the Court of Arches or of Audience, and from that court to the archbishop; all suits begun before the archbishop are to be determined by him without appeal, saving always the prerogative of the Archbishop and Church of Canterbury. In case of an appeal touching the king, appeal is allowed from any of the said courts of the realm to the Upper House of Convocation of the province.

Before proceeding to the statute of the next year, which modified the statute of appeals in its most important point, it must be observed:—

1. That although the Act lays down the principle that all spiritual causes should be decided within the realm, it provides only for the decision within the realm of the classes of causes mentioned above, *i.e.*, testamentary and matrimonial, &c. Appeals, however, on the subject of elections were implicitly forbidden by the statute of annates. Heresy was likewise left to the ordinaries by statute 14 of this session without any provision for appeal.
2. The statute of appeals creates no new jurisdiction, except in the case of appeals touching the king, in which case the determination is referred to the Upper House of the Convocation. This jurisdiction does not appear ever to have been exercised; the nearest approach to it being the reference of the validity of the king's marriage with Anne of Cleves in 1540 to the clergy of the two Convocations. This, however, was not in course of law, but (1) by reference on petition of Parliament; (2) by special commission of the king to the clergy of the Convocations; (3) to both Houses of Convocation; (4) to the Convocation of both provinces.
3. The provision of appeal in diocesan cases contains no important innovation, nor anything that calls for explanation, and, as this portion of the Act was so shortly superseded, the administration of the law under this rule does not seem to have created any difficulties. But it must be observed that the appeal as it stands is from the archdeacon to the bishop, and from the diocesan court to the archbishop, and in the archbishop's own diocese from the archiepiscopal Courts of Arches and Audience to the archbishop. It might be argued from this that in such cases of appeal the personal administration of the appellate judge was to be required. It further appears that there might in such cases be an appeal from the archbishop's official or auditor to the archbishop himself, in which case it would be clear that in the nomination of official or auditor the archbishop could give no commission investing the nominee with the whole of his judicial authority. This clause may be further compared with the eighth constitution of Clarendon, which provides for a recourse to the king if the archbishop fails to do justice: "That by the king's precept the controversy may be terminated in the court of the archbishop." This passage, however, seems to be better explained by supposing a delay or frustration of justice than an appeal from a wrong decision, in which case by the same constitution it is possible, with the king's leave, to proceed further, that is, to have recourse to Rome.
4. It is to be observed finally that this Act was passed after the submission of the clergy, so that it should

not be supposed that the alteration made the next year was in consequence of that concession; that this Act is not repealed by the statute 25 Hen. VIII. c. 19.; that in all the later repeals and revivals it is repealed and revived as co-ordinate with that Act; that it is expressly referred to in that Act as valid; and that therefore in all points in which it is not implicitly repealed thereby it is still in force.

The statute 25 Hen. VIII. c. 19., "The submission of the clergy and restraint of appeals" contains by way of preamble the form, and proceeds to confirm, as matter of law, the document known as the submission of the clergy. The Act then proceeds—

1. To extend the process established by the 24 Hen. VIII. c. 12. to all manner of appeals, of what nature or condition soever they be, or what cause or matter soever they concern.
2. To provide a remedy for lack of justice at or in any of the courts of the archbishops; this is done by allowing an appeal to the king's majesty in the king's Court of Chancery; upon every such appeal a commission is to be directed under the great seal to such persons as shall be named by the king, as in case of appeal from the admiral's court, to hear and definitely determine such appeals, and the causes concerning the same; the commissioners are to have power to determine such appeals definitively, and no further appeals to be had or made from the said commissioners for the same. Appeals from exempt jurisdictions are to be taken immediately to the king in Chancery.

This Act thus, whilst confirming the order of appeals presented in the statute of appeals, provides a further recourse in appeal from what, under the former Act, was final and definitive, and extends the subject matter to all matters on which appeals could lie.

It is open to the following observations:—

1. It did not explicitly make any matter capable of appeal that was not so before, and if heresy and misconduct of divine service were not matters of appeal before they are not now made so.
2. Although the decision to be given by the commissioners was to be definitive, this was not construed so as to preclude the issue of a new commission by way (not of appeal, but) of review. This was an act of supremacy in which the king entered on the exercise of the papal practice of successive delegations.
3. The question whether this provision of appeal could be regarded as accepted by the Convocation, or as implicitly contained in their submission, has been already noticed.

The statute 26 Hen. VIII. c. 1., which gives the largest interpretation of the supreme headship, involved as a consequence the exercise of the almost unlimited powers, assigned to the king, by a new organisation under the king's vicar-general or vicegerent. And Cromwell received a commission of a very extensive character of which no copy is to be found, but which is known, from the commissions taken out by the archbishops and bishops under him, to have been almost, if not entirely, exhaustive. The powers of jurisdiction granted by this commission were not exercised in such a way as to affect the constitution of courts or mode of procedure under Cromwell, who exercised the visitatorial powers to their fullest extent. But the commission remained as a precedent for the machinery of the High Commission of the reign of Elizabeth, although not formally copied.

The statute 37 Hen. VIII. c. 17., a Bill that doctors of the civil law being married may exercise ecclesiastical jurisdiction, after a preamble, in which the royal supremacy is, as we have seen, made to imply the possession of all ecclesiastical jurisdiction, and that exclusive of any inherent jurisdiction in the clergy, a right which is disparaged by the exclusion of laymen from ecclesiastical jurisdiction (by canon law as yet unrevised),—the king, himself being a layman, proceeds to enact that such married men being doctors created or incorporated in any university, as shall be deputed by the king or archbishop, bishop, or other who has authority to create a chancellor, vicar-general, &c., may lawfully exercise all manner of ecclesiastical jurisdiction and all censures and coercions appertaining to the same.

The canon law enactments, by which laymen were made incapable of exercising ecclesiastical jurisdiction, might be noted here, *e.g.*, Const. Chichele, 1415, No. 2. Johnson Canons, II., 479; Wilkins III., 370; Lyndwood (ed. 1525) lib. III., fo. XCIII. :—"presentis auctoritate concilii ordinamus et statuimus quod nullus clericus conjugatus bigamus sive laicus quovis exquisito colore sub suo vel alieno nomine infra nostram Cantuariensem provinciam



"de cetero jurisdictionem spiritualem exercent qualem-  
cunque." This was justified by the Decretals:—

"Indecorum est enim laicum vicarium esse episcopi et  
sæculares in ecclesia judicare II., decr. caus. 16, q. 7.,  
c. 22."

"Decernimus ut laici ecclesiastica tractare negotia non  
præsumant, sed episcopi, abbates, archiepiscopi, et alii  
ecclesiarum prælati de negotiis ecclesiasticis, maxime de  
illis quæ spiritualia esse noscuntur laicorum iudicio non  
disponant." Greg. IX., lib. II., de iudiciis, tit. 1. ca. 2.

This statute 37 Hen. VIII. c. 17 was, in the case of  
Walker v. Lamb (see Stephens' note), declared to be not  
restrictive but declaratory; and therefore does not preclude  
others than doctors from being judges. This opinion of the  
judges seems, however, to be grounded on an extreme view  
of the character of the supreme headship, and also to be at  
variance with the letter of the statute, especially in its con-  
cluding clause, which is sufficiently restrictive:—"so that  
they be doctors of the civil law as is aforesaid." It may,  
perhaps, be noted, on the other hand that the popes had  
occasionally empowered lay princes to act as delegates in  
ecclesiastical causes, and that the very fact of the canonical  
legislation against the usage, coupled with the limitations  
set in practice on the canonical rule, seem to show that it  
had not been very carefully observed.

The legislation of Henry VIII. on heresy is so closely  
bound up with the legislation on judicature as to require  
some short consideration here. The king's occasional par-  
ticipation in trials of heresy (as in the case of Lambert  
*alias* Nicholson), although quite consistent with his theory  
that full ecclesiastical jurisdiction was involved in his  
supreme headship, is of less importance than the legislative  
enactments on the subject, which are—

- (1.) St. 25 Hen. VIII. c. 14. An Act for punishment  
of Heresy.
- (2.) St. 31 Hen. VIII. c. 14. (the Act of Six Articles).
- (3.) 34 & 35 Hen. VIII. c. 1. Act for advancement of  
true religion.
- (4.) 35 Hen. VIII. c. 5. An Act concerning the Qualifi-  
cation of the Statute of the Six Articles.

1. The first of these statutes, which became law at the  
same time with the statute of submission, seems to have  
been intended to limit the power of the ordinaries in the  
coercive treatment of heretics, but to increase the activity  
of the common law against the culprits. This Act con-  
firmed the statutes of 5 Richard II., which authorised the  
arrest of heretic preachers by the sheriffs and others under  
commission from the Chancery, and the 2nd of Hen. V.,  
st. 1. c. 7., which ordered an oath to be taken by all sheriffs  
and other magistrates to assist the ordinaries; but repealed  
the Act 2 Hen. IV. c. 15., which allowed the ordinaries on  
suspicion to arrest the heretics and imprison them until  
they purged themselves or were committed to the secular  
law to be burned after the determination of holy church  
and canonical sanctions. In consequence of the unfair-  
ness of imprisonment on suspicion, and the invalidity  
now recognised of the canonical sanctions and papal  
definitions of heresy, it was ordered that such arrests should  
be made only on presentment by jurors empanelled for  
the purpose, or by presentments in the court leets. No  
change is, however, introduced which affects the judicial  
power of the ordinary after the heretic is presented, nor is  
the rule made by Archbishop Arundel for proceeding against  
heretics directly repealed. So much of that rule as is con-  
sistent with the restraint on arrest must have remained in  
force, and in fact, the words in which it describes the sum-  
mary process against offenders were copied in the commis-  
sions issued for the trial of heretics in the two following  
reigns.

§§ The Act 26 Hen. VIII. c. 1., which as a part of the  
supreme headship places the power of taking cogni-  
zance of heresy in the hand of the king, was con-  
strued no doubt as giving him a direct jurisdiction  
irrespective of the action of the ordinaries. This was  
exercised generally by means of commissions directed  
to individual bishops and others, as in the case of  
the anabaptists of 1538, but occasionally by the king  
himself, as in the case of Lambert *alias* Nicholson in  
the same year. In 1539 was passed the Act of Six  
Articles.

2. Statute 31 Hen. VIII. c. 14. An Act abolishing  
diversity of opinions, known generally as the Act of Six  
Articles. This Act records and confirms the definitions  
arrived at by the king with the assent of Parliament and  
Convocation, and subjects all who impugned these con-  
clusions to treatment as heretics, prescribing different  
grades of punishment. Commissioners are to be empowered  
to carry out the proceedings contemplated by the Act, and  
commissions are to be given to archbishops, bishops, and  
others to hold quarterly sessions for the purpose; besides

this the bishops are authorised to receive information in  
visitations and the justices of the peace to inquire by jury;  
the persons so accused to be tried by the Commissioners.

The courts held under this Act, even when composed of  
ecclesiastical judges, were not ecclesiastical courts; and,  
even in the controverted matter of marriage of priests, pro-  
ceeded according to the rules of the common law. In this  
respect no change was admitted by the Act 32 Hen. VIII.  
c. 10., which was intended to amend the former Act on the  
point of priests' marriages, &c.

The statute 32 Hen. VIII. c. 15 amended the Act of Six  
Articles by joining archdeacons and officials of each diocese  
to the Commissioners for inquiry, and such other persons  
as the king shall appoint; and these commissions when  
directed to the archbishop, &c. by the name of his office  
are to hold good for his successors.

3. The statute 34 & 35 Hen. VIII. c. 1., "An Act for  
the advancement of true religion and for the abolishment  
of the contrary," directs the suppression of heretical  
books, false translations of the scripture, &c. The execu-  
tion of this Act is committed to the ordinary of the diocese  
in which the offence was committed with two justices of the  
peace, or (in lieu of the ordinary and judge) two of the  
king's council. The penalties on the ecclesiastical offender  
are, on refusal to recant or second offence, to abjure and  
bear a fagot; on refusal to abjure, to be deemed a heretic  
and be burned; in the case of a layman, on the first  
offence to recant and be imprisoned 20 days, and on refusal  
or second offence as in the case of the priest.

This Act thus places the lay judges in a co-ordinate  
position with the ordinary, but leaves no discretion as to  
the penalty of heresy after the third offence.

4. The statute 35 Hen. VIII. c. 5. limits the operation  
of the Act of Six Articles to the cases in which there is a  
presentment by jury, and thus excludes the secret and  
wanton accusations possible under that Act.

III. The details given under the above heads are suffi-  
cient to render any long treatment of the third point (the  
constitution of the courts) unnecessary. The conclusion,  
so far as the history of the court goes, may be stated thus:—

1. The king assumes, and the Acts of Parliament in the  
preambles accept the assumption, that all eccle-  
siastical jurisdiction is conferred and may be exer-  
cised by the king himself; and this so far that some  
of the bishops accept commissions, empowering  
them as lieutenants of the king or his vicegerent to  
exercise all the ordinary powers and authority of  
the episcopate, "præter et ultra ea quæ tibi ex sacris  
litteris divinitus commissæ esse dinoscuntur."  
(Cardw. Doc. I., 3.)

2. The institution of an appeal to the king in Chancery  
and the consequent formation of the tribunal known  
as the high court of delegates created a new court  
of ultimate appeal in all manner of ecclesiastical  
causes in which the right of appeal lay; and, as this  
was primarily an ecclesiastical court, the law which  
it administered was the ecclesiastical law, and its  
procedure was framed on the old civil law procedure  
as developed in the ecclesiastical courts; but the  
history of this jurisdiction during the reign is to the  
last degree obscure, and may not improbably have,  
if exercised at all, been confined to matrimonial and  
testamentary causes.

3. The measures for revising the canon law under the  
second provision of the submission of the clergy  
were not carried into effect during the reign, not-  
withstanding the three Acts by which the king was  
empowered to appoint revisers. The result of this  
and of the provision for the maintenance of the  
existing canon law, where it did not contradict the  
law of England or the royal prerogative, until the  
revision was completed, was, that with those excep-  
tions the old canon laws remained in force. In one  
point, the employment of lay judges, the canon law  
was distinctly repealed, but in most matters the  
changes consisted in the elimination of the pope's  
name and authority from all documents and pro-  
cesses in which it would have occurred.

4. The new procedure under the Act of Six Articles, &c.  
was not a modification of ecclesiastical judicature,  
but the institution of a new jurisdiction, partly in  
lay and partly in ecclesiastical hands, but owing its  
existence to the Act of the Parliament. The other  
Acts which modified the law of heresy did not touch  
the ecclesiastical jurisdiction, being confined to that  
part of the process which preceded the action of the  
ordinary, save and except the withdrawal from the  
ordinary of the power of imprisoning on suspicion.  
The objection to the canonical sanctions, expressed  
in the preamble of the statute against heresy,



25 Hen. VIII. c. 14., does not seem to have any direct effect on the enactments, the determination of the fact of heresy, and consequently the defining of the point in which the heresy consisted being, apparently, still left to the ecclesiastical judge.

It may be as well to defer for later consideration, if necessary, the exact amount of permanent result which these innovations had. The legislation on heresy was, however, very short-lived; the assumption of the absolute headship was never accepted as part of the Reformation settlement; the reform of the canon law was never effected. The foundation of the court of appeal and the practical exclusion of papal interference were nearly all the permanent particulars of detailed change; but the idea of royal supremacy was capable of being worked in many directions, and must be regarded as generally affecting the whole course of English church history from the year 1531 onwards.

The reigns of Edward VI. and Mary need only to be treated parenthetically, for the policy of Elizabeth and her ecclesiastical settlement is historically linked on directly to that of her father; but these reigns may afford some illustration of the view, taken at the time, of the character of Henry's measures; of the possible development of the principles on which he acted, and of the exaggerated and violently opposed theories which successively worked in Church and State before the permanent settlement was reached. This, however, may be accomplished by a very brief survey.

The legislation of the reign of Edward VI. is chiefly memorable in relation to our subject as marking the extreme point which was reached by the practical working of the theory of the supremacy, between which and the earlier theory accepted by the clergy in 1531 the ultimate settlement or definition by Elizabeth was a sort of mean point. None of the judicial changes of the reign was in itself permanent, except the procedure under the Act of Uniformity, which, however, was seldom acted upon. It is possible that the spirit of some other parts of the executive system had a more abiding influence; that the idea of the High Commission Court in particular grew out of the schemes for a royal ecclesiastical judicature, which appears in a partially developed form in the executive and judicial commissions issued by Edward, and in the limitation of the episcopal judicature which resulted from the Acts of his second Parliament, and which he himself proposed to carry still further. It will be best, in the examination of the Acts of the reign, first to describe them simply, and then to point out analytically the special bearing on the subject as thus indicated:—

1. The first Act of the reign of 1 Edw. VI. c. 1. is the Act against those who shall unreverently speak against the sacrament of the body and blood of Christ, commonly called the sacrament of the altar, and for receiving thereof in both kinds.

The proceedings under this Act are to be taken before the justices of the peace in quarter sessions, on the oath of two accusers, and to be by verdict of jury; the bishop of the diocese is to be summoned to appear either by himself or by his chancellor or other deputy, to give counsel and advice to the justices; the punishment of offenders is to be imprisonment and fine.

2. The statute 1 Edw. VI. c. 2. abolishes the ancient form of electing bishops and substitutes for it appointment by the king's letters patent; and further provides, that as "all authority of jurisdiction, spiritual and temporal, is derived and deducted from the king's majesty as supreme head of the churches and realms of England and Ireland, and so justly acknowledged by the clergy of the said realms, and that all courts ecclesiastical within the said two realms be kept by no other power or authority, either foreign or within the realm, but by the authority of his most excellent majesty," all summonses and citations in all causes of instance between party and party, in all causes of correction, in all causes of bastardy or bigamy, patronage, probate, and administration, be made in the name of king, the teste being in the name of the archbishop or bishop; and all seals of the ecclesiastical courts shall have the king's arms thereon. The Archbishop of Canterbury, however, may seal faculties and dispensations with his own seal; and the bishops of each diocese may use their own seals in admitting, ordering, and reforming the officers of their courts, commissioning suffragan bishops, and sealing presentations, collations, gifts, institutions and inductions, letters of orders and letters dimissory. All certificates of the spiritual courts required for trial

of causes depending in the courts of common law are to be made in the king's name and sealed with the bishop's seal engraved with the king's arms.

3. St. 1 Edw. 6. c. 3. "An Act for the punishment of vagabonds." Clerks convicted, if entitled to purgation, are to serve as slaves for a year, the master being bound to the ordinary, with two sufficient sureties, to keep them so.
4. St. 1 Edw. 6. c. 12. repeals all the Acts against heretics now in force, viz. (2 Ric. II. s. 2. c. 5.; 2 Hen. V. s. 1. c. 7.; 25 Hen. VIII. c. 14.; 31 Hen. VIII. c. 14.; 34 & 35 Henry VIII. c. 1.; and 35 Hen. VIII. c. 5.), including thus the Act of Six Articles and the Act against erroneous books; this Act also imposes penalties of forfeiture, imprisonment, and the punishment of high treason on all who affirm by word or in writing that the king is not supreme head on earth of the Church of England.

#### NOTES.

§ Besides the passing of these Acts attempts were made to press further changes. A Bill for a Court of Chancery for ecclesiastical causes was read twice in the House of Lords; a Bill for appointing dioceses and jurisdictions to archbishops and bishops was read once; and a Bill for laymen to have benefices, having had three readings in the Commons, was read once by the Lords.

§ As to the participation of the clergy in these enactments it is enough to say that the Convocation sitting coincided with this Parliament accepted the principle of communion in both kinds, which is embodied in the first statute, and discussed the repeal of the Act of Six Articles.

§ Notwithstanding the repeal of the heresy Acts, trials for heresy and consequent abjurations were held before the archbishop and others, lay and clerical, as commissaries of the king.

§ Crammer, and possibly other bishops, renewed their commissions for the exercise of ordinary jurisdiction at the beginning of the reign; and the king in the first year contemplated a visitation of the dioceses, in prospect of which letters of inhibition were directed to the ordinaries. Injunctions for ecclesiastical reforms were also published and enforced by royal authority.

§ The bishops afterwards deprived for opposing the reformation sat in the Parliament of 1547.

The second Parliament of Edward VI. which sat with a short recess at Christmas from Nov. 24, 1548 to March 14, 1549, passed the following Acts:—

1. St. 2 & 3 Edw. 6. c. 1. "An Act for the uniformity of service and administration of the sacraments throughout the realm." This Act directed the use of the Prayer Book and forbade the public use of any other forms, imposing penalties of deprivation and imprisonment on offenders. Proceedings under this Act may be taken either before justices of oyer and terminer and justices of assize in their general sessions, to whom the bishop of the diocese may at his pleasure associate himself; or by the bishops and other ecclesiastical judges in visitations and synods and elsewhere according to the king's ecclesiastical laws; but the same offence is not to be punished by both jurisdictions.

2. St. 2 & 3 Edw. 6. c. 13. "An Act for the true payment of tithes." This Act orders that suits for subtraction of tithe shall be in the king's ecclesiastical courts only, to the intent that the king's judge ecclesiastical may decide the same according to the king's ecclesiastical law; the exercise of the spiritual jurisdiction being limited by the statutes 13 Edw. I. s. 1. c. 5.; 9 Edw. II. c. 1., 25., &c., i.e., stat. Westmr. 2; circumspecte agatis, articuli cleri, silva cædua and Westmr. I. Appeal is contemplated in section 13.

3. St. 2 & 3 Edw. 6. c. 21. "An Act to take away all positive laws against marriage of priests." This abolishes all canons and constitutions to the contrary effect.

4. St. 2 & 3 Edw. 6. c. 23. An Act for the repeal of a statute touching pre-contract. This Act repeals 32 Hen. VIII. c. 38., and brings back the state of the law to the state and order of the king's ecclesiastical laws of this realm which were in use before that statute was passed.

§ Of the matters concerned in these Acts, it is to be observed that the first Prayer Book of Edward VI. was approved by Convocation, and that the lawfulness of priests' marriages was asserted in a resolution of Convocation of Dec. 17, 1547.

§ Bishop Bonner was deprived of his see in October 1549 after trial before Archbishop Crammer, Bishop Ridley,



Sir Thomas Smith, and Wm. Mey, D.C.L., and dean of St. Paul's under two commissions from the king for hearing and determining the charges against him "summarily and de plano" or otherwise, and for proceeding either by mere office or by way of denunciation. Bonner made all possible objections, appealed first against Smith as judge, then against all the judges as suspect, thirdly against the rejection of the former appeals, and fourthly, against and after sentence, demanding *apostoli*. The judges laid the matter before the king, who referred the question to a body of privy councillors and lawyers for an opinion. They reported that "*dictæ prætensæ appellationi nullo modo deferendum esse, maleque et sine aliqua rationabili sive legitima causa ex parte dicti domini Edmundi in dicto negotio appellatum*" and confirmed the sentence. The charges against the bishop were primarily contempt of the king's injunctions, but the Commissioners were authorised to hear all charges whatever, and these contained articles of neglect, &c. The consideration of the matter by the royal councillors does not seem to be an act of the delegates on appeal as contemplated by statute 25 Hen. VIII. c. 19., for the court appealed from was the royal commissioners, not the proper court of the archbishop. Bonner's final appeal, however, was made to the king "and unto his court of Chancery or Parliament, as the laws, statutes, and ordinances of this realm will bear and suffer in this behalf;" and in the opinion of the councillors it is added "*appellationemque hujusmodi ad memoratum dominum nostrum et ejus curiam cancellariæ sive parlamentum ex minus veris justice seu legitimis causis in hac parte interpositam fuisse et esse.*" The commission by which Gardiner was deprived (Foxe vi., 95), empowered the Commissioners to proceed "*ex officio mero, mixto vel promoto, omni appellatione remota, summarie et de plano, absque omni strepitu et figura judicii ac sola veritate inspecta;*" Dec. 12, 1550.

I cannot find the commission for proceeding against *Tunstall*, but Mary's commission for hearing his appeal is worded in the same way as the commission for trying Gardiner.

§ The proceedings against heretics, especially Joan Bocher in 1549, were taken before the Archbishop, Sir Thomas Smith, Wm. Cooke, dean of the arches, and others as "*cognitores, inquisitores, judices et commissarii*" of the king, by special commissions apparently in each case. The procedure is that of an ecclesiastical court, and the convict is delivered over to the secular arm in the ancient fashion.

The third Parliament of Edw. VI. (3 & 4 Edw. 6.) sat from Nov. 4, 1549 to Feb. 1, 1550; in it were passed the following Acts:—

st. 3 & 4 Edw. 6. c. 10. "An Act for the abolishing and putting away of diverse books and images." The books, &c. were to be delivered up to the bishops, chancellors, and commissaries, and by them destroyed. Offences against the Act were to be determined by justices of the peace and justices of assize.

st. 3 & 4 Edw. 6. c. 11. "An Act that the King's Majesty may nominate 32 persons to peruse and make ecclesiastical laws." This Act gave the king for three years powers to proceed in the reformation of the canon law contemplated under the late king, providing that four of the clerical commissioners should be bishops and four of the lay members learned in the common law.

Under this Act several commissions were issued—

a. Oct. 6, 1551, one to eight bishops, eight divines, eight civilians, and eight lawyers.

b. Nov. 11, 1551, to two bishops, two divines, two civilians, and two lawyers as a committee named with advice of the council.

γ. Feb. 10, 1552, another commission constituted as the first.

st. 3 & 4 Edw. VI. c. 12. An Act for ordering ecclesiastical ministers. The Act authorising the framing of an ordination and consecration service "by six prelates and six other men of the realm learned in God's law" to be appointed by the king.

§. In this Parliament (3 & 4 Edw. VI.) several efforts were made to remedy the weakness of the church jurisdiction. On the 14th of November 1549, in the House of Commons a Bill was introduced for the administration of ecclesiastical laws by students of the universities admitted by the archbishop, bishops, &c., this was read a second time Nov. 18; a third time Dec. 3; sent to the Lords Dec. 5 and read once, read a second time Dec. 10. In the meantime, on the 14th of November, the bishops had made a formal complaint that by the use of public proclamations

their jurisdiction had fallen into contempt, and they dared not bring any criminal into court, compel attendance at church, or punish crime. In consequence of this the prelates were requested to bring in a Bill. They did this on the 18th of the same month, but, as the Lords thought their pretensions too great, the matter was referred to a committee containing three bishops, three lay lords, three judges, and the attorney and solicitor general. After the Commons' Bill had been read a second time on the 10th of December no more is heard of it, but on the 11th a new Bill, probably drawn by the committee of the Lords, was read a first time, and committed to the attorney general; it was read a second time December 23 and ordered to be ingrossed, and on the 24th received the unanimous assent of the Lords and was sent to the Commons; in the Lower House it was read a second time on the 8th of January and committed to the Secretary of State; there it seems to have staved, for on the 21st of January a new Bill on the subject was read twice in the Commons; on the 22nd it had a third reading, and again on the 31st the new Bill was read a third time. What proceedings the Lords took does not appear, but no Bill became law, the renewal of the Acts for reformation of the canon law being probably regarded as a compromise or as a sufficient instalment of reform.

§. Besides these measures a Bill for the repeal of a certain branch of the Act of Uniformity was brought forward in the Lords; a Bill on preaching and holding divers opinions was three times read in the Commons, and a Bill concerning holydays received several readings in both Houses; none of these became law.

§. The next Parliament was held in 1552, Jan. 23. Bonner was deprived in October 1549; Gardiner in February 1551; Heath and Day in October 1551.

§. In 1549, April 12, the king issued a commission of heresy to seven bishops and 18 others; and in 1551, Jan. 18, to six bishops and 25 others, for inquiry into all articles of heresy, for examining sworn witnesses, receiving abjurations, absolving and imposing penances, handing the pertinacious and obstinate to the secular power, and punishing the clergy who contemned, despised, opposed, or spoke against the book of common prayer; the commissioners being bishops, divines, doctors of law, councillors, secretaries, and others, who are constituted cognitors, inquisitors, judges, and commissaries, to act omni appellatione remota, three to be a quorum. The commission contains words in striking analogy with the old form: as "*summarie et de plano, ac sine strepitu et figura judicii*" and the clause "*non obstante quod denunciatio indicatio sive accusatio contra personas prædictas hujuscemodi in hac parte non processerit, sive aliquibus aliis statutis aut ordinationibus in parliamentis nostris in contrarium editis sive provisus, in quibus forsan major solemnitas et circumstantia ad hujuscemodi exequenda negotia requiruntur.*" Rymer, xv. 181-183. Cardw., Doc. Ann. I., 102-106.

The Parliament of 1552 was, to a great extent, influenced by men who were either committed to larger measures of change in the direction of foreign Protestant reform, or were obliged by their political position to acquiesce in the personal projects of the young king. All the resisting prelates had been now deprived, and the party of Northumberland and Northampton which, after a short speculation in direction of reaction, had committed itself to further changes, was dominant in the council. The memorandum book of the king gives evidence of the projects that were chiefly in his mind, the revision of the new liturgy and the reformation of discipline, which had completely broken down, as was stated by the bishops in the last Parliament:—"As for the prayers and divine service, it were meet the faults were drawn out, as it was appointed, by learned men, and so the book to be established, and all men willed to come thereunto to hear the service, as I have put in remembrance in articles touching the statutes of this Parliament; but as for discipline, I would wish no authority given generally to the bishops, but that commission be given to those that be of the best sort of them to exercise it in their dioceses."

In preparation for the Parliament the Prayer Book was revised by a body of divines, 42 articles of religion were drawn up and approved, and the revision of the canon laws was pressed on. It is probable, from the language of the letters of the period, that in all these matters a committee of Convocation was acting, but no record of the Convocation itself has been preserved. The Parliament sat from January 23 to April 15. The ecclesiastical Acts which were passed in the session 5 & 6 Edw. IV. were these—

1. 5 & 6 Edw. VI. c. 1. The second Act of Uniformity, which enforces the use of the revised Prayer Book, and authorises the archbishops, bishops, and all



other officers exercising ecclesiastical jurisdiction to correct and punish by ecclesiastical censures all offenders against the Act. At the same time the justices are authorised to try offenders who have been present at other services not set forth in the book of common prayer.

2. 5 & 6 Edw. VI. c. 3. An Act for the keeping of holy-days and fasting days. This Act prescribes the days to be kept as feasts and fasts, and authorises the archbishops, bishops, and other ordinaries to enforce the observance by ecclesiastical censures.
3. 5 & 6 Edw. VI. c. 4. "An Act against fighting and quarrelling in churches and churchyards." Cognizance of the offence and infliction of punishment are left to the ordinary. The offenders are to be ipso facto excommunicate, and in case of striking with a weapon or drawing a weapon, the justices are empowered to order the offender to have an ear cut off or to be branded in the cheek.

The measures for the reform of discipline contemplated by the king, do not appear in the statute book, but several Bills drawn with that intention were read in Parliament; in particular, a Bill on simony and advowsons was read three times in the Lords and twice in the Commons; two Bills at least on divorce went through both Houses; and a Bill for the revision of the canon law, probably a renewal or confirmation of the previous Acts, was read three times in the Commons and twice in the Lords. It is probable that the revision, now being made in the *Reformatio Legum*, although not quite ready, was so far advanced as to make it unnecessary for such a Bill to be passed. In this Parliament the Lords passed a Bill for the attainder of Bishop Tunstall for misprision of treason, but it was withdrawn in the House of Commons; and he was subsequently, on the 14th of October, deprived by commission, directed to the lord chief justice and others, against which sentence he appealed, and which was reversed in the next reign. Rymer XV., 334.

The last Parliament of the reign, March 1-31, 1553, passed no statute of direct importance on the subject of ecclesiastical jurisdiction.

The proceedings of the reign of Mary were directed to the restoration of the system which had been materially modified by Henry VIII., and which, under Edward VI., had been nearly subverted. In her first year she repealed the nine most important of her brother's Acts, and in the second year seventeen of the most important statutes of her father's reign.

In the second session of the first Parliament, which sat Oct. 24-Dec. 5, 1553, the Act 1 Mary s. 2. c. 2. repealed the following statutes of Edward VI.:-

- 1 Edw. VI. c. 1. (On the sacrament.)
- 1 Edw. VI. c. 2. (On the *congé d'élire* and ecclesiastical jurisdictions.)
- 2 & 3 Edw. VI. c. 1. (Act of Uniformity.)
- 2 & 3 Edw. VI. c. 21. (Priests' marriages.)
- 3 & 4 Edw. VI. c. 10. (Books and images.)
- 3 & 4 Edw. VI. c. 12. (Ordinal.)
- 5 & 6 Edw. VI. c. 1. (Uniformity and attendance.)
- 5 & 6 Edw. VI. c. 3. (Feasts and fasts.)
- 5 & 6 Edw. VI. c. 12. (Priests' marriages, &c.)

The church at the close of this session was restored to the condition, in respect of status and authority, in which it was left at the death of Hen. VIII.; the queen remained supreme head on earth, and the service of the church was ordered to be that commonly used in the last year of Hen. VIII. The property alienated from religious uses since that date was not restored.

The queen did not wait for legislative sanction before attempting to remedy the mischiefs that had arisen in the department of ecclesiastical jurisdiction; on the 4th of March 1554 she issued injunctions for the due execution of the ecclesiastical law, and she dropped the title of supreme head in the title of the statute roll of that year. Further legislation was, however, postponed until after her marriage, and the reconciliation of the kingdom to Rome by Cardinal Pole. The next parliament, 1 & 2 Philip and Mary, sat from Nov. 12, 1554 to Jan. 16, 1555.

The Acts of Hen. VIII. repealed by 1 & 2 Philip & Mary c. 8., "An Act repealing all statutes, articles, and provisions made against the see apostolic of Rome since the 20th year of King Hen. VIII., and also for the establishment of all spiritual and ecclesiastical possessions and hereditaments conveyed to the laity," are as follows:-

- 21 Hen. VIII. c. 13. s. 9. Against dispensation for pluralities.
- 23 Hen. VIII. c. 9. Citations.
- 24 Hen. VIII. c. 12. Appeals.
- 23 Hen. VIII. c. 20. Annates.
- 25 Hen. VIII. c. 19. Submission.

- 25 Hen. VIII. c. 20. Consecration.
- 25 Hen. VIII. c. 21. Abrogation of exactions, dispensations, &c.
- 26 Hen. VIII. c. 1. Royal style.
- 26 Hen. VIII. c. 14. Suffragans.
- 27 Hen. VIII. c. 15. Revision of canons.
- 28 Hen. VIII. c. 10. Abolition of the pope's authority.
- 28 Hen. VIII. c. 16. Release of dispensations.
- 28 Hen. VIII. c. 7. s. 7. Degrees of marriage.
- 31 Hen. VIII. c. 9. Making bishops of the new sees by letters patent.
- 32 Hen. VIII. c. 38. Pre-contracts.
- 35 Hen. VIII. c. 1. s. 7. Oath of supremacy.
- 35 Hen. VIII. c. 3. The King's style.
- 37 Hen. VIII. c. 17. Allowing married D.C.L.'s to be ecclesiastical judges.
- 1 Edw. VI. c. 12 ss. 5, 6. Abolition of special treasons.

Besides these repeals the same Parliament (1 & 2 Phil. & Mary c. 6.) restored and re-enacted the three laws against heresy, two of which had been repealed by Edw. VI. and the third by Hen. VIII.

The object of this series of measures was to restore, as far as could be done, the state of things which had existed in 1529, the 20th year of the reign of Henry VIII., to which reference was made in the comprehensive clause of the Stat. c. 8. for repealing all clauses of all Acts that were directed against the papal supremacy. But the impossibility of reviving some parts of the old system was, of course, obvious; the alienated property of the monasteries was secured to its holders, the newly constituted sees were recognised and confirmed, and the recognition of the validity of documents in which the title of supreme head had been inserted was an indispensable concession. A clause was even introduced into the great Act of repeal (s. 24.) providing that nothing contained in the Act, or in the documents incorporated in it, should be taken to derogate from the liberties, privileges, prerogatives, pre-eminences, authorities, or jurisdictions which were in the imperial crown of this realm, or belonged to it in the 20th year of Hen. VIII., or under any of his predecessors; the authority restored to the pope is, without diminution or enlargement, that which the pope had by authority of the supremacy in the 20th year, and the ecclesiastical jurisdiction of the archbishops, bishops, and ordinaries is to be in the same state, for process of suits, punishment of crimes, and execution of censures of the church, with knowledge of causes belonging to the same, and as large in these points as the said jurisdiction was in the said 20th year.

It is unnecessary for our purpose to trace further the ecclesiastical legislation of Philip and Mary, as it has no bearing on the later history of our subject; but it may be noticed that in the enforcement of measures for the repression of heresy the queen resorted to expedients not very unlike those taken by her father and brother, issuing letters to the justices to inquire after heretics and deliver them to the ordinaries; most of the trials of the heretics were by a show of ecclesiastical law after it had been restored by Parliament; and, of the apparent irregularities in the deprivations, trials, and punishments of the reforming bishops, some were covered by the as yet unrepealed Acts of Hen. VIII.'s reign, and some by the mixed character of the offences imputed to the accused:-

1. By Comm., Mar. 15, 1554, Taylor of Lincoln, Hooper of Worcester, and Harley of Hereford were deprived of their bishoprics, which they had accepted *quam diu se bene gesserint*.
- By Comm., Mar. 16, Holdgate of York, Ferrar of S. Davids, Bird of Chester, and Bush of Bristol were deprived as married men.
- And Ridley of London, Poyntet of Winchester, and Scory of Chichester were removed as intruders to make way for the bishops displaced by Edw. VI.
2. As to the trials for heresy. Hooper was tried before Gardiner ecclesiastically for offences committed in the diocese of Winchester, and Ferrar before the bishop of S. Davids in a similar way.
- Cranmer was (1) attainted in Parliament; (2) convicted as heretic by a commission of doctors; (3) condemned by Bishop Brooks as sub-delegate for James, cardinal of S. Mary in *via lata*; and (4) his degradation was ordered by the pope.
- Ridley and Latimer were condemned by White of Lincoln, Brooks of Gloucester, and Holyman of Bristol as commissioned by Cardinal Pole.

The accession of Elizabeth was followed by a reversal of all that was most characteristic in her sister's policy; but not by a hasty recurrence to the principles of Edward's reign, or even by an unmodified adherence to the system of her father. The doctrinal and ritual changes which were



scarcely broached under Hen. VIII. had become, under the pressure of the Marian persecution, a necessary part of the reforms expected from the new reign; but the total destruction of discipline which had marked the policy of Edward was a danger to be carefully guarded against, and the conviction of the queen and her advisers were opposed to any unnecessary deviation from the ancient plan of church government. The title of supreme head of the church was by her Protestant advisers represented to her as unscriptural, and was, as she new, a form most heartily disliked by all those adherents of the unreformed religion, whose support was indispensable to her. She had not, like Edward, any strong bias towards the religious teaching of the continental reformers and her advisers were for the most part men of compromise. The result of this combination was, in the revision of the Prayer Book, some small but important alterations in the way of compromise. In the re-settlement of church government her action was more free, and her recurrence to her father's principles more decided.

Elizabeth's first Parliament met a few days after her coronation. In the interval between her sister's death and her coronation she had issued a proclamation forbidding unlicensed preaching, and any changes in divine service "to be used until consultation be had by Parliament by Her Majesty, and her three estates of this realm, for the better conciliation and accord of such causes as at this present are moved in matters and ceremonies of religion." In this proclamation, which is simply an order to observe the existing laws, the queen made no attempt to go beyond her undoubted prerogative. Time was not lost in affecting change. The Parliament met on the 23rd of January and sat until the 8th of May, when it was dissolved. The statutes passed in it are remarkable for their comprehensive, as well as their permanent, character, embracing the whole subject of the ecclesiastical constitution, and remaining, in all but one important matter, practically in force until the present century.

The first Act of the reign, 1 Eliz. c. 1., is entitled "An Act restoring to the Crown the ancient jurisdiction over the State ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same."

It contains 43 clauses, of which the most important are these:—

§ 1-15. The statute 1 & 2 Philip and Mary c. 8 is repealed, and 10 specified statutes of Hen. VIII. on ecclesiastical matters are revived; but the appeal does not carry the revival of the statutes which are not specified, and which therefore stand repealed.

The revived statutes are:—

- 23 Hen. VIII. c. 9. Citations.
- 24 Hen. VIII. c. 12. Appeals.
- 23 Hen. VIII. c. 20. Annates.
- 25 Hen. VIII. c. 19. Submission.
- 25 Hen. VIII. c. 20. Consecration.
- 25 Hen. VIII. c. 21. Dispensations.
- 26 Hen. VIII. c. 14. Suffragans.
- 28 Hen. VIII. c. 16. Dispensations.
- 32 Hen. VIII. c. 38. Pre-contracts.
- 37 Hen. VIII. c. 17. Allowing married men to be ecclesiastical judges.

The statutes whose repeal is confirmed are:—

- 26 Hen. VIII. c. 1. Style of supreme head.
- 27 Hen. VIII. c. 15. Ref. Legum (expired).
- 28 Hen. VIII. c. 10. On the authority of the pope.
- 31 Hen. VIII. c. 9. On making bishops by patent.
- 35 Hen. VIII. c. 3. King's style.
- 35 Hen. VIII. c. 1. s. 7. Oath of supremacy.

Besides these the statute 1 Edw. VI. c. 1. is revived, and the statutes of heresy re-enacted by (1 & 2) Philip and Mary c. 6. are repealed.

The effect of omitting the revival of 26 Hen. VIII. c. 1., 28 Hen. VIII. c. 10., 35 Hen. VIII. c. 3., and 35 Hen. VIII. c. 1. s. 7., was the abolition of the royal claim to the title of supreme head as affirmed by Act of Parliament, and the necessity of introducing some new forms and machinery for exercise of the ecclesiastical supremacy with which the queen did not intend to part, as well as for the exclusion of the papal authority. To this purpose the remaining clauses of the Act are directed.

§ 16 abolishes all foreign jurisdiction; s. 17 annexes to the Crown all such jurisdictions, &c. exercised and used for the visitation, &c.; restoring to the Crown in modified form the visitatorial and corrective authority recognised by 26 Hen. VIII. s. 1 as belonging to the supremacy, but not containing the indefinite claims annexed to the title by that Act; s. 18 empowers the queen to assign commissioners to exercise the visitatorial and corrective power thus recognised; ss. 19-31 authorise the form of oath in which the queen is recognised as supreme governor in ecclesiastical

as well as temporal things or causes, and provide for the enforcement of the same, as well as for the punishment of those who act in contravention of its purport; s. 32 continues the provision as to præmunire contained in 1 & 2 P. & M. c. 8. s. 40; s. 35 orders that nothing done by this Parliament shall be hereafter adjudged heretical or schismatical; and s. 36, that the commissioners described in s. 18 shall in defining heresy be guided by Holy Scripture or the first four general councils or by other general councils on the authority of scripture or by the Parliament with the assent of the clergy in their Convocation. The remaining clauses are of technical or temporary importance.

The second statute is the Act of Uniformity, which recognises and confirms the powers of the ordinary to reform, correct, and punish by censures of the church all offenders against the provisions of the Act.

The other ecclesiastical statutes are concerned with the payments of first fruits, c. 4; impropriations, cc. 4 and 19; statutes of cathedrals, c. 22; and suppression of the new monasteries, c. 24.

As the whole of Elizabeth's ecclesiastical legislation is based on the first two statutes, it may be convenient here to note the later Acts which concern the subject of ecclesiastical jurisdiction.

5 Eliz. c. 9. reserves the powers of the ecclesiastical courts to punish perjury. 5 Eliz. c. 23. provides for the execution of the writ de excommunicato capiendo, making it returnable in the King's Bench and otherwise securing its enforcement, but saving the power of the ordinaries to receive the submission of the excommunicate and to absolve and release him. 13 Eliz. c. 12. for enforcing the observance of the 39 articles, authorises the ordinaries or the queen's commissioners in causes ecclesiastical to deprive offenders. 23 Eliz. c. 1. "An Act to retain the queen's majesty's subjects in their due obedience," provides for the safety of the jurisdiction of the archbishops, bishops, and other ecclesiastical judges. 31 Eliz. c. 6., against abuses at elections, &c., provides for the authority of ecclesiastical censures in the matter. 43 Eliz. c. 4., on charitable uses, also provides for the security of the jurisdiction of the ordinary.

## 2. *Sketch of the history of Ecclesiastical Judicature from the reign of Elizabeth.*

The ecclesiastical jurisdiction from the reign of Elizabeth to the year 1641 included (1) the ancient ecclesiastical jurisdiction of the provincial, diocesan, subordinate, and peculiar courts, exercised under the ancient restrictions and administering the ancient law as modified by the ecclesiastical enactments of Parliament, the new canons of the church, and to a certain extent by royal injunctions. It contained (2) the supreme court of ecclesiastical appeal, established by the statute 25 Hen. VIII. c. 19, and administered by delegates nominated by the king in Chancery, and (3) the court of High Commission permanently established by Elizabeth on the plan of the commissions issued by Edward VI., but based on the power given to the Crown by statute 1 Eliz. c. 1. § 18. These elements may be now touched on separately.

I. The ancient ecclesiastical jurisdiction. In this part of the judicature no structural change was introduced by the Reformation statutes, but its action was modified in some respects by those statutes; projects for further alteration were freely entertained, and some very fundamental changes would have been permanent had it not been for the change of policy under Mary and Elizabeth.

a. *As to the authority of the Courts.*—The authority by which the ecclesiastical courts were held was that of the archbishops, bishops, and other ordinaries. The statements of the several statutes which declare all authority of the ordinaries to be derived from the king must be taken with such limitation as legal history compels us to make; but the fact remains that the legislation of Mary, which was not repealed by Elizabeth, reversed the legislation by which Edward VI. had enjoined that all process in the ecclesiastical courts should run in the king's name and under seals bearing the king's arms. The statute 1 Mary sess. 2. c. 2. repealed the Act 1 Edw. VI. c. 2; and the same queen by her instructions for the execution of the ecclesiastical jurisdiction (Mar. 4, 1554) directed the omission of the words "regia auctoritate fulcitur" from ecclesiastical writs. The statute of Mary was repealed by the Act of Uniformity (1 Eliz. c. 2.) only so far as affected the book of common prayer; and although the effect of the repeal of the statute of Mary by statute 1 James I. c. 25. § 8. was incidentally to revive the statute 1 Edw. VI. c. 2., the operation of that reviver has been ruled to be overruled by the statute of 25 Hen. VIII. c. 20. The question was raised in the 4 James I. as to the authority of bishops



elected and consecrated in disregard of the Edwardian statute, and it was then determined that the reviver of 25 Hen. VIII. c. 20. had the effect of a repeal which was not annulled by the operation of 1 James I. c. 25. And the same decision was given in 1637 in a report of the judges to the Star Chamber, and in a proclamation issued by the king to the same effect [Aug. 18, 1637], (Gibson, Codex, 132, 967; Cardwell Doc. Ann. II., 263; Rymer XX., 156).

[It is not intended here to prejudice the question how far the exercise of the jurisdiction of the bishops inherent in their office is affected, limited, or confirmed by the fact that it is not exercised "but by" and under the power of the king given us so to "do." See Laud, Rushworth III., App. 117, Cardwell, D.A. II., 263.]

*B. As to the Law administered.*—The project of revising the ancient canon law had proceeded so far as the composition of the book, entitled the *Reformatio Legum*, in the last year of Edward VI., but that compilation did not receive from him the necessary authorisation. The minor statutes which empowered him, as similar statutes had empowered Henry VIII., to name commissioners for the purpose, were temporary statutes, but the statute of submission, by which the project was originally sanctioned, was revived at Elizabeth's accession, and some attempts were made in her first Parliament to effect the purpose; on the 27th of February 1559, March 1st and March 17th, a Bill of this purport was read in the Commons; it received a first reading in the Lords on the 22nd of March, after which it is heard of no more. It is possible that in some of Elizabeth's later Parliaments the scheme was revived as a part of the reforms in the ecclesiastical courts, to which the queen opposed a negative; the book itself, as drawn up by Cranmer and Peter Martyr, was published in 1571.

1. The scheme having thus failed, the canon law, so far as it did not contravene the laws of the land or the king's prerogative, remained in force, according to the provision of the statute of submission.
2. The king's "ecclesiastical laws," not less than the canon law, were administered by the ecclesiastical courts in all particulars, in which by the letter of the statutes the jurisdiction of those courts was confirmed or saved. These ecclesiastical laws were, besides the legislation on the book of common prayer and the articles of religion, such other statutes as regarded the jurisdiction in subtraction of tithe, perjury, brawling in church, and the like, many of which have been indicated in the foregoing summary. These laws were ordered to be studied in the universities by graduates in law, by the royal injunctions sent to those bodies; and although the courts of common law, in the discussion of prohibition, insisted more strongly on the right of the lay judges to interpret the Acts of Parliament than to deal with the canons, there can be no doubt that in the spiritual courts both were, where they did not conflict, of equal validity, and, where they did conflict, the statute law overruled the canon. When we remember that the statute law altogether annulled the authority of the pope, it will be seen that it very materially limited the matter of the canon law applicable to the circumstances of the reformed church.
3. Besides the ancient canon law and the king's ecclesiastical law, there remained the legislation of the clergy assembled in Convocation by royal authority, licensed to proceed to legislation by royal authority, and requiring for the execution of their canons royal authorisation. This legislation added to the code of ecclesiastical law the canons of 1597, 1604, and 1640; the two former of which, not having received parliamentary authority, are regarded as not binding on the laity, although they fulfilled the requirements of the statute of submission; whilst the latter, owing to the informality of the proceedings under which they were drawn up, and other political causes which were too strong for the clergy to strive against, are regarded as having no authority at all. But besides these, there were under Elizabeth several bodies of canons drawn up in Convocation which, for want of some portion of the royal authorisation, had but imperfect authority. Such canons were those of 1571, to which the queen refused her authority. Synodalia I., 113; those of 1575 and 1585, to which she gave her approbation, but did not apparently seal; those of 1597 she sealed with the great seal; but the whole were superseded and embodied in the canons of 1604, which received full royal sanction.

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4. To these may be added the royal proclamations, injunctions, and advertisements issued either by the assumed authority of the supremacy or under statutory powers given in the Act of Uniformity.

Our view of this portion of the subject would be incomplete without some notice of the attempts at the reform of ecclesiastical judicature made in the Parliaments of Elizabeth and James I.; checked, however, by the peremptory command of the former to abstain from interference with the church, and eluded or otherwise rendered abortive by the policy of the latter. Thus, in Elizabeth's second Parliament, Bills were introduced for securing that spiritual judges should be graduates (Commons, Mar. 7, 13, 26; Lords, Mar. 30, 31); and for placing the peculiar jurisdictions under the bishops (Lords, Mar. 18).

In 1584 a Bill was read in the Commons on appeals from the ecclesiastical courts; in 1589, 1593, 1597 similar projects were discussed. Several propositions were made in the Hampton Court conference for the relief of the puritan party, which failed to meet acceptance; and during the reigns of James I. and Charles I. a constant struggle was going on in which the jurisdiction, not only of the old ecclesiastical courts but of the High Commission also, was matter of discussion. Neither the proposals for reconciliation nor the schemes for reform and abolition, produced any effect on the legislation for the clergy during these reigns. In a return offered to the Commission on the subject of the action of Parliament with respect to Convocation notes will be found as to most of these projects.

*7. As to the constitution of the Courts.*—The courts of ancient jurisdiction which subsisted under this revival were the provincial, consistory, archidiaconal, and peculiar courts which had survived the dissolution of the monasteries and other changes of the period; in reference to which the following questions arise:—

1. Was the Convocation of the clergy a court of ecclesiastical jurisdiction during this period?
2. Was any spiritual character required for ecclesiastical judges?
3. Was the authority of the official in these courts such as to exclude the action of the archbishop or bishop in his own court?
4. Were there any cases in which, as falling outside the ordinary course of ecclesiastical legislation, the bishop or archbishop could without a commission from the Crown act upon his inherent authority without restriction from the official or precedents of his own court?

The first of these questions is one on which a great deal of controversy might be taken. Our conclusions may be briefly stated—

1. Before the Reformation the provincial Convocation may be fairly regarded as a court attendant on and assessing to the archbishop, discussing cases of litigation or correction which were brought before him therein, or were laid by him before his clergy; but we are inclined to believe that so far as *jurisdiction* was concerned the authority resided in the metropolitan and not in the synod.

By the statute 24 Hen. VIII. c. 12., the upper house of the Convocation is made a tribunal of appeal in causes touching the king, but this is superseded by the Act of the following year, in which all appeals, whomsoever they touch, are referred to the king in Chancery. The case of the Nullity of the Marriage of Anne of Cleves, which was (colourably) decided by the Convocations of both provinces, was heard by both houses of both Convocations under a special commission issued at the petition of Parliament.

Coke, however, in the 4th Institute, recognises Convocation as one of the ecclesiastical courts of the realm, and describes its function thus: "Their jurisdiction was to deal with heresies, schisms, and other mere spiritual and ecclesiastical causes, and therein they did proceed *juxta legem divinam et canones sancte ecclesie*." The judicial functions of Convocation which had been earlier exercised in the cognizance of heretical doctrines, persons, and books, under the authority of and as assessing to the archbishop, functions distinct from its legislative and taxing powers, admit of little illustration during the period before us. Coke writes "was," probably holding that all the *jurisdiction* of Convocation was by the Submission transferred to the Crown and executed by the High Commission. Serious questions may be raised as to the soundness of Coke's view as to the *jurisdiction* of the Convocation in case of heresy before the statute 2 Hen. IV. c. 15, as explained in the 12th Book of the Reports.

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The right of Convocation to exercise jurisdiction by examining, censuring, and condemning heretical tenets, and the authors and maintainers of them, was affirmed in reference to Whiston's case by eight judges, four being of the contrary opinion; the four, however, agreeing that heretical tenets and opinions may be examined and condemned in Convocation authorised by royal licence, without convening the authors or maintainers of them. May 4, 1711. Cardw. Synod ii., 760-764.

2. It does not appear that any distinct spiritual qualification was required of ecclesiastical judges acting as officials or commissaries. The statute 37 Hen. VIII. was interpreted even more loosely than its words seem to allow, even the qualification of a degree of D.C.L. being regarded as unnecessary, and the statute being regarded simply as declaratory and affirmative without restriction.

It was an object with the archbishops to alter this; by the canons of 1571, it is ordered that ecclesiastical judges be acquainted with civil and church law, 26 years old, graduates, practised in the courts, of good report, and either "in sacro ministerio," or if not, "animo toto et fervente zelo erga religionem feretur," and that they take the oath of supremacy and subscribe the articles of religion; they are not to excommunicate, but to refer the pronouncement of that sentence to the bishop, who either shall pronounce it himself or commission "gravi alicui viro in sacro ministerio constituto." Synodalia, l, 118, 119; see also Canons of 1585, p. 144; and 1597, p. 155, and the Canons of 1604, Nos. 122, 127.

The inconvenience of having spiritual sentences pronounced by judges who were not themselves spiritual persons, was alleged by the Puritan party at the Hampton Court conference, the objections being raised to the persons who issued excommunications, "first, why laymen as chancellors and commissaries should do it; secondly, why the bishops themselves for the more dignity to so high and weighty a censure should not take unto them for their assistants the dean and chapter, or other ministers and chaplains of gravity and account." No agreement as to any change resulted from the complaint, the king merely suggesting that the excommunication might be surrendered for some other equivalent form of coercion. (Phoenix I., 144, 147.)

A few years later some of the bishops conferred the office of chancellor on clergymen not qualified by degree as civilians. This was resented by the civilians, who about 1615 petitioned the king "against some of the bishops and archdeacons who promoted certain theologians, unskilled in the civil and canon law, to sustain the burden of chancellors and officials;" in consequence of this the king is alleged to have certified to the archbishop his royal will that such persons should be removed from office. Notwithstanding this, in 1625 the Bishop of Llandaff appointed a divine, Mr. Robotham, his son-in-law, chancellor of Llandaff. The same bishop, after becoming Bishop of Hereford, had made his son chancellor there; he was, however, deprived. The advocates of Doctors Commons petitioned for the removal of the chancellor of Hereford, and the king granted the request. (Oughton, Int., p. vi., Cf. Godolphin, C. 10, pp. 82, 83.)

The canon 122 of the year 1604 directs that the sentence of deprivation of benefice, or deposition from the ministry, shall be pronounced only by the bishop with the assistance of his chancellor, some of his chapter, or his archdeacon, and two other ministers. This canon does not interfere with the power of suspension and subsequent excommunication, belonging to the ecclesiastical judge however qualified.

Charles II. in his declaration of Oct. 25, 1660, proposed that no bishop should exercise that part of his jurisdiction which appertains to the censures of the church without the advice and assistance of presbyters, and that no chancellors, commissaries, or officials should exercise any act of spiritual jurisdiction in the cases of excommunication, absolution, or where the pastoral charge is concerned. This limitation, which is in accordance with Ussher's plan of a qualified episcopate, had no result.

[The ancient law distinguishing between deposition and the more serious and imposing process of degradation should be, perhaps, noted above.]

3. The Court of King's Bench in the case of Bishop of S. Davids against Lucy, held that the commission

of chancellor or vicar-general could not be regarded as excluding the archbishop or bishop from sitting in his own court (Stephens' I., 289). But although this is reasonable as an affirmation of law, it is not easy to adduce instances in which the power has been exercised since the Reformation.

It appears, from the Return on the Patents of Official Principals, made for the present Commission, that in several dioceses it is the practice at the present day to reserve to the Bishop himself important sections of judicial work, or a general right to execute in person the offices otherwise deputed.

The question whether the Archbishop of Canterbury ever acted personally in the Court of Arches, with or without the presence of the official principal, is not susceptible of a distinct answer. The historical cases in which the archbishop is represented as acting judicially are complicated by the uncertainty whether he was acting as a member of the High Commission in his own Court of Arches or of Audience.

In the case of Lennard (a matrimonial cause, Strype, Parker, 145), Archbishop Parker acting "plane et summarie" adjudged the matter without taking it into the Court of Arches, but this was a case within his own diocese of Canterbury.

4. This is the same question in different words; it does appear from the trial of the heretics in 1612 by Bishops King and Neile that some such consideration held good in cases of heresy. Legate was condemned by consistory court; Wightman by Bishop Neile. See Gardiner's Jas. I., II., 44; 3 Inst. 39; 12 Rep. 58, 93; Hale pleas of the Crown, l, 30.

## II. THE COURT OF DELEGATES.

The Supreme Tribunal of Appeal in Ecclesiastical Causes, from the year 1559 to 1832, was that created by the Statute 25 Hen. VIII. c. 19, in the following words:—"And for lack of justice at or in any of the courts of the archbishops of this realm, or in any of the King's dominions, it shall be lawful to the parties grieved to appeal to the King's Majesty in the King's Court of Chancery; and that upon every such appeal a commission shall be directed under the Great Seal to such persons as shall be named by the King's Highness, His heirs or successors, like as in case of appeal from the Admiral's Court, to hear and definitively determine such appeals and the causes concerning the same. Which Commissioners, so by the King's Highness, His heirs or successors, to be named or appointed, shall have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same. And that such judgment and sentence as the said Commissioners shall make and decree, in and upon any such appeal, shall be good and effectual, and also definitive, and no further appeals to be had or made from the said Commissioners for the same." By a subsequent clause, appeals from exempt jurisdictions are provided for in the same way. This Statute having been repealed by 1 & 2 Phil. & Mar. c. 8, was expressly revived by the 1 Eliz. c. 1., and the tribunal created by it continued unmodified by subsequent legislation, until by St. 2 & 3 Will. IV. c. 92, and 3 & 4 Will. IV. c. 41, its functions were transferred to the Judicial Committee of the Privy Council.

The tribunal so established is known as the "High Court of Delegates," and is briefly described by Coke in the 4th Institute, cap. 74, as vulgarly called the Court of Delegates, because there "the Delegates sit by force of the King's Commission under the Great Seal upon an appeal to the King in the Court of Chancery." "And these commissioners are called delegates because they are delegated by the King's Commission."

The action of this tribunal would perhaps be more accurately described as a function of the King in his Chancery, and the name of delegates, as applied to the Commissioners appointed for each case of appeal, is no doubt derived from the usage of the Roman Church and Roman Law in case of appeals, for the regulation of which several sections of the Decretals were drawn up. The use of such delegations or commissions for the trial of appeals from the Courts of the Admiral and Marshal had been not uncommon in England since the 14th century, the business of those courts being conducted under the civil law, which required the service of prectors and advocates trained in departmental jurisprudence. In the copy of a Commission of this sort given by Prynne, 4th Institute, pages 402 and 403,\* the commis-

\* NOTE.—"Nos supplicationi predictæ annuentes, ac de fidelitate et circumspectione vestris plenius confidentes, vobis tribus et duobus ves-



sioners are not called delegates, but it is possible that the name may have been given to them before the tribunal of ecclesiastical appeal was instituted. The departmental character of the canonical or civilian procedure, followed in the ecclesiastical courts, no doubt suggested the employment of a similar method when the supreme jurisdiction in ecclesiastical appeals was vested in the King.

The powers of the court (so-called) of delegates were, by the Statute, full and final. The commissioners were authorised to hear and determine all ecclesiastical appeals from the courts of the archbishops, and their decision was to be good, effectual, and also definitive. As delegates for this purpose they were clothed with the full judicial authority of the Crown, not acting as advisers on a judgment to be otherwise given, but themselves authorised to make and decree judgment and sentence without further appeal.

But, although the powers of the delegates were full and final and subject to no further appeal, this character was to a certain extent modified both in theory and in practice by the right, which was held to remain to the king, of issuing commissions of review. The practice of appeals to Rome had been always subject to the possibility of such review by the Popes, and, notwithstanding the stringent wording of the Statute of Henry VIII., the Elizabethan lawyers maintained that, by virtue of the supremacy as they understood it, the power of rehearing the whole case, supposed to be definitively decided by the delegates, remained in the Crown.

The application for a Commission of Review, which in other respects differed little from a Commission of Appeal or of Delegates, was made by a special petition to the King in Council, which was "referred to the Lord Chancellor, who, after hearing the parties by counsel, reported "whether in his opinion the Commission ought to be "conceded or not." (Rothery's Report, p. xii.) The Commission of Review was authorised to hear the whole cause *de novo*, and was not a court of appeal on a particular point, so, it must be supposed, evading the literal interpretation of the Statute 25 Hen. VIII. c. 19.

The Court of Delegates was accordingly not a court of first instance, nor one in which suits could be tried on letters of request; but its jurisdiction in ecclesiastical matters was limited to appeals from the courts properly ecclesiastical; it could not entertain appeals from the Court of High Commission. The jurisdiction in appeals from the courts of exempt jurisdiction was by another clause of the Statute provided for in the same way by recourse to the King in Chancery, and the authority of the King's Commission.

In the *Reformatio Legum, de Appell. c. xi.*, the following scheme of appeals was proposed, and, if it had been approved and legalised, must have superseded for all ordinary purposes the jurisdiction of the delegates:—"Ab archidiaconis, decanis et his qui sunt infra pontificiam dignitatem et jurisdictionem habent, ad episcopum liceat appellare, ab episcopo ad archiepiscopum, ab archiepiscopo vero ad nostram maiestatem. Quo cum fuerit causa devoluta, eam vel concilio provinciali definiri volumus, si gravis sit causa, vel aatribus quatuorve epis- copis a nobis ad id constituendis. Quibus rationibus, cum res fuerint definita et iudicata, per appellationem amplius cognosci non poterit."

The jurisdiction of the delegates extended to every sort of subject matter which could be dealt with in the provincial court by way of appeal. In a former section of this draft report it has been questioned whether, under the ancient law, any appeal from the court of first instance in the case of heresy was ever allowed; and whether under the legislation of Henry VIII. it was intended that any treatment of heresy by recourse to higher tribunals should be made possible. It is probable, moreover, that so long as the Court of High Commission existed, any cause concerning doctrine or ritual, which was of too great importance to be dispatched in the diocesan courts, would be carried at once before the High Commission; and no record of any such appeal heard before the delegates is to be found during the period of the existence of the Court of High Commission. For every other branch of spiritual jurisdiction, civil or criminal, in matrimonial and testamentary suits, and in the whole subject matter of ecclesiastical litigation, the jurisdiction of the delegates was, as has been said, full and final; and, if the Statute of Henry VIII. is to be interpreted as establishing a tribunal of appeals, not only on matters on which appeals were customarily allowed at the time, but also on matters

on which in time to come the right to appeal might be introduced, then the words "upon every such appeal" must be held to authorise their jurisdiction in cases of heresy, or of doctrine or ritual, whatever other means, by other Statutes, may have been devised for the enforcement of law.

The mode by which the action of the Court of Delegates was put in motion is described as follows:—The appeal from the provincial court, which might be either from a definitive sentence or from an interlocutory decree having the force of a definitive sentence, was made the subject of a petition to the king in Chancery. This was presented by the proctor of the Appellant, who likewise sent in a draft of the Commission prayed for. Unless something unusual was asked for, the Commission was presented, without special notice, by the secretary of commissions to the Lord Chancellor; the Chancellor signed a fiat, and under the fiat the great seal was set to the Commission. No consideration appears to have been taken as to the nature of the appeal, or whether it was just or expedient that it should be permitted.

There is no restriction in the words of the statute as to the character and qualifications of the persons who were to be employed as delegates, unless the words "like as "in case of appeal from the Admiral's Court" be construed to imply that persons acquainted with civil or canon law should be appointed. Otherwise the words "such persons as shall be named by the king's highness" give the greatest latitude; and this latitude, although practically circumscribed by custom and necessity, does not appear to have ever been limited by statute or, so far as we are aware, by order of the Crown. The necessity of appointing Commissioners acquainted with ecclesiastical procedure was always sufficiently obvious; and, as the study of civil and canon law was practically confined to the lawyers of Doctors' Commons, the employment of a quota of delegates from that incorporation was, throughout the existence of this tribunal, invariably adopted. In some of the early Commissions either this class of jurists alone was employed, or else the names of other persons joined with them in the Commissions who did not act have been omitted from the records. But with these exceptions, the Commissions of Elizabeth's reign included also ministers of state, or an archbishop and bishops. During this reign only nine Commissions of appeal in which either doctrine or discipline were at all concerned are forthcoming, and in five of these the names of civilians only are recorded. Probably the number of appeals in testamentary and matrimonial causes may have been greater. Between the accession of James I. and the year 1640, in two cases the delegates were bishops only, in four cases common law judges are joined in the Commissions; in the great majority of cases civilians acted alone. Between 1660 and 1688, in 18 cases the court consisted of bishops, judges, and civilians, and in 19 cases of the last two classes only. Between 1689 and 1714, bishops were joined with judges and civilians in 26 cases, and in 13 cases judges and civilians acted without bishops. Between 1714 and 1750, bishops, judges, and civilians acted together in eight cases, and with the addition of peers in 20 cases; there being 19 cases in which judges and civilians acted alone. From 1751 to 1838, when the last cause was heard, there were 28 appeals, in one of which a peer sat with judges and civilians, and in all of which bishops were excluded. These particulars are taken from Mr. Rothery's return, presented to the House of Commons in 1868, which unfortunately does not furnish any materials touching the composition of Commissions for appeals in matrimonial and testamentary suits. It appears from such scanty information as can now be obtained on these matters that it was not unusual, even in days when the bishops were altogether omitted from commissions of appeal on discipline, to place some names on Commissions of review in testamentary or matrimonial causes, and in the earlier cases of Commissions of review of the former class some bishops generally served. Only 193 cases of appeals to the delegates are recorded between 1586 and 1838 on matters in which doctrine and discipline were concerned.

The practice of the chancellors in the selection of delegates, during the last century of the existence of the tribunal, seems to have been very formal and perfunctory, and complaints of the character of the court were made a century and a half before it was abolished. In 1635 a petition was signed by 12 doctors of laws, praying for stated judges in the Court of Delegates (Rothery, p. x.; Report of 1832, p. 6; Evidence, p. 159. Life of Sir L. Jenkins, II. 695). Bishop Gibson, in the preface to the Codex (p. xxi.), objected to the mixture of peers and common law judges, as opposed to the spirit of the Statute of Appeals (24 Hen. VIII. c. 12.), and to the properly

trum committimus vices nostras ac plenam tenore presentium potestatem ad cognoscend et procedend in causa appellationis predictae et negotio in la parte principali, ipsamque cum suis emergentibus, dependentibus, incidentibus et connexis debito fine terminand ipsamque cum cujuslibet coheretionis canonice potestate, etc. Rob. Pal. 11 Hen. IV. p. 1. m. 12."



ecclesiastical character of the court. But, whatever opinion may be formed on those points, the custom actually observed and reported in the evidence laid before the Commission of 1832, shows that no regard whatever was paid to the qualification of the judges for their office, and that the most perfunctory routine was regarded as sufficient for the selection of delegates for supreme ecclesiastical jurisdiction.

The practice was to appoint the delegates according to a rota, which contained the names of all the puisne common law judges and all the doctors of civil law. In the original Commissions were inserted the names of three of the senior doctors of civil law, three juniors and three common law judges. The seniority and juniority of the doctors was ascertained by entering the names on the rota, according to the date of the degree, and, for the purpose of selection, the first half of the number were considered as seniors, and the rest as juniors; the order of selection was thus, to begin at the two extremes of the rota and work to the middle. When the commission was drawn, it was presented to each of the persons named in it, and if it was declined by such a number of doctors as left the civilians fewer in number than the common law judges, a commission of adjuncts was applied for by petition, which was always brought specially before the chancellor, and, on his fiat, the process was repeated. (Report of 1832, Evidence, p. 268.)

The Commission of Delegates required that there should be one common law judge concurring with the opinion of the majority to enable them to give a sentence; in case of an equal division among the judges, or in case no common law judge concurred with the majority, a commission of adjuncts was applied for.

In the case of commissions of review more care seems to have been taken; as, however, only one commission of review is recorded within the century preceding the abolition of the court, no mass of materials for information on this subject is forthcoming, and we have to rely on the papers printed in the case of Matthews against Warner in 1798.

In this case the delegates had confirmed on appeal a judgment of the Prerogative Court of Canterbury and remitted the appeal. The appellant, thereupon presented to the king "in council his humble petition, praying for the reasons therein contained, that he would be graciously pleased to grant him a commission of review directed to such lords spiritual and temporal, judges of the common law and doctors of the civil law, of the realm, as to his majesty should seem meet, with the usual clause of quorum, to rehear, reconsider, and determine the sentence pronounced by" the delegates. This petition was read, "present, the king's majesty in council," "where it was ordered by his majesty that the said petition should be referred" to the chancellor to examine into the same and report his opinion thereon to his majesty at that board. That done, the chancellor reported to the king, certifying that he had considered the order and petition, and heard the parties concerned by their counsel, and that the points of law which arose on the proceedings appeared to him "so important to the public that it was fit they should be heard and determined in the most solemn manner; and that he was therefore humbly of opinion that it would be reasonable and proper for his majesty to grant a commission of review in this cause." In consequence the king was pleased, with the advice of his privy council, to order that a commission of review should be issued; and a commission was issued to three bishops, three temporal lords, including the chief justice of the king's bench; three common law judges, including the chief justice of the common pleas and the chief baron; and three civilians, including the judge of the Admiralty, Sir William Scott. Two of the bishops declining or being prevented from acting, and the chief justice of the common pleas having died, a new commission of review was issued later, appointing two other bishops in the place of the two defaulting bishops and a puisne judge in the place of the chief justice of the common pleas. (From the Printed Case: early Commissions of Review are in the *Fœdera* XVII., 519; and XIX., 78.)

The judges in the Court of Delegates did not publicly assign the reasons of their sentence, but in deliberating on their judgment they assigned their reasons to each other and in the presence of the registrar. (Report of 1832, p. 6. Evidence, pp. 62, 255.)

The Court of Delegates had subsisted for about three centuries with no material alteration imposed by legislative authority, but with customs and rules of its own, the result of long-continued usage and of the practical reforms introduced by successive chancellors in the working of the commissions. It was in 1830 made the subject of examination by the Royal Commission, which reported in 1832. The evidence given before this Commission tends to show that, although the proceedings of the Court of Delegates

were somewhat expensive and dilatory, no substantial charge of injustice or excess of powers could be laid against it. We are informed that it seldom reversed the judgments of the provincial courts; that it was, so far as the civilian element went, frequently composed of junior and inexperienced doctors; that its proceedings were undignified, and especially the mode of payment (a guinea a day paid by the victorious party at the close of the cause to each of the judges). The fact, moreover, that the reasons for the judgments were not given seems to have been regarded as infusing an element of uncertainty as to the nature of the law administered by the court. But the learned witnesses were unable to suggest any substitute that could be represented as satisfactory, and a majority of them declined to agree without material qualifications to the suggestion which seems to have proceeded from the Commissioners themselves, that the functions of the delegates should be transferred to the privy council. Some of the objections were made on the ground of the unsatisfactory condition of the privy council judicature, which was subsequently reformed by the Statute 3 & 4 William IV. c. 41; some on the ground that the character of that tribunal was not sufficiently ecclesiastical, a representation based apparently on the fact that the civil and canon laws and lawyers had no place in it. Similar objections were made to the adoption of the House of Lords as a substitute for the delegates.

Notwithstanding the balance of opinion against the proposed changes, and a very modified acquiescence in the proposal by those witnesses who approved it, the Commissioners have been required, by a communication from the Lord Chancellor, Lord Brougham, to report specially and immediately on the jurisdiction of the Court of Delegates and the expediency of transferring that jurisdiction to the Privy Council, made a special report, recommending the abolition of the jurisdiction of the delegates and the transfer of the right of hearing appeals to the Privy Council, together with some suggestions of reform for the Privy Council judicature, and of the abolition of commissions of review. The reasons given for the abolition of the delegates are the expense and delay caused by the issue of a commission in each suit; the want of uniformity of decisions, and the silence observed by the court as to the grounds of the judgments. The reasons given for the substitution of the Privy Council are chiefly the superior qualifications of its members, the permanent existence of the tribunal, the publicity given to the reasons of the judgments. The Commissioners' judgment was as a matter of course accepted by the Crown, and the Court of Delegates was abolished for most purposes [The exception being the recourse allowed to the delegates by the provision in the patent of a Colonial bishop on which see Rothery, p. 100] by the Act 2 and 3 William IV. c. 92.

It cannot fail to be noted that, neither in their examination of witnesses nor in their report, do the Commissioners appear to have contemplated the peculiar character, or the possible occurrence, of appeals on matters of doctrine. All the arguments traceable in favour of or against the transfer of the jurisdiction turn on the advantage of improving the procedure in suits in which temporal interests are concerned, and, even where the maintenance of ecclesiastical form is insisted on, it seems to be merely in the sense of retaining the civilian or canonical jurisprudence. Nor do either the witnesses or the Commissioners note that the silence of the delegates as to the grounds of their decisions had at all events the effect of saving the country from the infliction of an authoritative exposition of law from the mouths of inexperienced judges. That this was afterwards recognised as a fact seems to be proved by the words of Lord Brougham spoken in the House of Lords in 1850 in the debate on Bishop Bloomfield's Bill; Handsard, series 3, vol. cxi. p. 629, "he could not help feeling that the Judicial Committee of Privy Council had been framed without the expectation of questions like that which had produced the present measure being brought before it. It was created for the consideration of a totally different class of cases (from the Gorham case) and he had no doubt that if it had been constituted with a view to such cases as the present some arrangement would have been made."

It remains to be added that, in Mr. Rothery's elaborate list and abstract of cases heard before the delegates only seven appeals are discovered "which can be shown to have even remotely involved any question of doctrine." In the first case sentence was given against the appellant; in five other cases the proceedings were discontinued before a final decision was given; and in the one remaining case the delegates varied the decree of the provincial court in a minor point, and confirmed the decree of the diocesan court from which the original defendant had appealed, he being the appellant also in recourse to the delegates. From



this it may be inferred that in no case in which the law of the Church of England, as touching doctrine, was concerned, are the delegates known to have reversed the decision of the provincial court.

### III. THE COURT OF HIGH COMMISSION.

The Court of High Commission was created by Queen Elizabeth under the authority of the Statute 1 Eliz. c. 1. (section 18 of Stephens's edition) for the execution of the supreme ecclesiastical jurisdiction, which by that Act, and by the Statute 26 Hen. VIII. c. 1., was given, or recognised as belonging to the Crown. This jurisdiction is defined as being such as "hath heretofore been or may lawfully be exercised or used for the visitation of the ecclesiastical state" and persons, and for reformation, order, and correction "of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities."

The Act 1 Eliz. c. 1, empowered the Crown, by letters patents, under the great seal of England, to assign name and authorise such persons, being natural born subjects, as the sovereign should think meet to execute the authority so recognised. From the extant copies of the commissions issued at various times under this Act, and from the recorded proceedings of the several courts of High Commission, we are enabled to form some idea of the way in which the powers so given were interpreted and used. In the following statement we have endeavoured to mark the most important characteristic points of the working of the court, but, as we have not a complete series of commissions, or any exact and formal reports of trials, the result must not be regarded as an exhaustive account.

The plan of exercising the royal jurisdiction by special commissioners had been used freely in the reign of Edward VI. and the early acts of Mary, and general commissions had been by the former sovereign in 1549 and 1551 issued to persons learned in theology and law or members of the royal council, to inquire into heresy and exercise full jurisdiction on heretics and contemners of the book of common prayer, with powers of extraordinary and probably of illegal extent. These commissions were not directly authorised by any statute, but issued under the powers supposed to be recognised in the Crown by the 26 Hen. VIII. c. 1. (See Cardwell, *Doc. Ann.* I. 102; Rymer, *Fœdera*, XV. 181-183, 250.)

A similar general commission for proceeding against heretics was granted by Philip and Mary, Feb. 8, 1557 (*Burnet II.*, app. 311), the proceeding in this case being limited to inquiry, and by reference to ulterior action to the courts of the ordinaries. Wilkins, iv. 140, gives a limited commission of the same sort for the diocese of Exeter, containing a reference to the wider commission to Bonner given by Burnet, but with some inconsistency of date (Feb. 16, 2 & 3 Phil. & Mary, 1556).

The powers conferred by the Act were immediately exercised by the queen; the parliament which passed the Act was dissolved on the 8th of May, and the first extant Commission was issued on the 19th of July 1559 (Cardwell, *Doc. Ann.*, Vol. I., p. 255). This Commission, which to a great extent follows the form adopted in the Commissions of Philip and Mary, is directed to Parker, nominated Archbishop of Canterbury, Grindal, nominated Bishop of London, and 17 other persons, knights, masters of requests, sergeants, and doctors of law. After reference to the Statute of Supremacy, 1 Eliz. c. 1., the Act of Uniformity, 1 Eliz. c. 2., and to the existence of false rumours and seditious books, the queen appoints the commissioners, or six of them, seven names being mentioned, one of which shall be of the quorum, during pleasure, to inquire, "as well by the oaths of 12 good and lawful men, as also by witnesses and other ways and means ye can devise," into all offences against the two Acts, and into heretical opinions, seditious books, &c. throughout the realm. They are further empowered to hear and determine the premisses; and to inquire, hear, and determine offences committed in churches or against divine service and ministers, and to order, correct, and reform those who absent themselves from church; to visit, reform, redress, order, correct, and amend (in the exact words of the Statute) all offences which, by any spiritual or ecclesiastical power, authority, or jurisdiction, can be so dealt with, to the pleasure of God, the increase of virtue, and the conservation of the peace and unity of the realm, "and according to the authority and power limited, given, and appointed by any laws or statutes of the realm." They are further to deal with vagrants and suspect persons, and to redress the wrongs of the clergy deprived for marriage under the late reign, without appeal; these two provisions are temporary and do not recur in the subsequent commissions. They are next authorised to hear and determine all notorious adulteries and other ecclesiastical crimes, and to use such means of discovering them as they shall think

expedient: on proof by confession, or by lawful witness, or by any due means, they may punish by fine or imprisonment, or otherwise; and they are empowered to summon offenders and suspected persons, and likewise such witnesses as they may deem necessary, and examine them on their corporal oath, to commit the obstinate and disobedient to prison, there to remain until released by the commissioners, to take recognisances for personal appearance and for obedience to orders, and to appoint a registrar, and a receiver to account at the Exchequer. These powers are to be executed, "any of our laws, statutes, proclamations, or other grants, privileges, or ordinances, which be or may seem to be contrary to the premises notwithstanding." All justices of the peace, officers, and faithful subjects are directed to assist, and the present letters patent are to be sufficient warrant.

On the model of the first commission all the subsequent commissions are drawn, but they vary from one another in many respects; some being intended to run over the whole realm, others being for the provinces of Canterbury or York separately, and some for the particular dioceses, in analogy more or less close with the ordinary commissions of the peace. As time goes on, the execution of other Acts, besides those of uniformity and supremacy, is confided to the commissioners, and the powers, which are loosely described in the earlier commissions, are explicitly stated or extended. The number of commissioners also is very largely increased. The following illustrations will probably be found sufficient.

A Commission issued April 23, 1576, Strype's *Grindal*, App. p. 64, is directed to a large number of persons, three being a quorum, 10 bishops and 18 others, clerk and lay, being named, one of whom was indispensable to the action of the three. To the functions prescribed in 1559 are now added explicitly the use of ecclesiastical censures for the punishment of offences and disobedience; the cognizance of offences against the statutes 5 Eliz. c. 1., and 13 Eliz. c. 12. involving the enforcing of the 39 articles, the right to command the justices and others to apprehend persons "which you shall think meet to be convented before you," to make statutes for newly founded cathedrals, ecclesiastical corporations, and grammar schools; and to administer the oaths prescribed in the Acts of the first year. The Commission is to be executed notwithstanding appeal, provocation, or exemption, as also notwithstanding laws, &c. to the contrary, as directed in that of 1559. There are some minor additions, such as the authority to use a seal and to levy fines for the use of the poor. It may be added that the extension of the Commissioners' powers to the enforcement of the statutes of 5 and 13 Eliz., is in agreement with the provisions of those Acts.

A Commission for the diocese of Winchester, dated June 16, 1596, Rymer, Vol. XVI. p. 291, probably drawn up after the conclusion of Cawdrey's case in which the powers of the Crown had been questioned, is addressed to the bishop of the diocese, the Marquis of Winchester, four lay Lords, 11 knights, esquires, and lawyers, and eight deans and graduates of divinity. This Commission adds explicitly to the powers of inquiry, "the oath of the parties to you detected," and states more explicitly the right of exacting a corporal oath in cases of suspicion; it includes among the statutes to be enforced the Acts 35 Eliz. cc. 1 & 2; and omits the qualifying words "according to the authority and power limited given and appointed by any laws or statutes of the realm." With respect to this omission, it would be rash to argue that it was a result of the opinion of the judges in Cawdrey's case, that the Crown had a right to issue such commissions irrespective of the Statute 1 Eliz. c. 1., but it may have been so. The clause conveying the general powers is in this and subsequent commissions transferred to the section in which the Commissioners are named, instead of being a subordinate section placed further on in the document. The powers contained in the general commission of 1576, touching cathedral and other statutes, are of course omitted.

A similar commission issued in 1597, differs only in the names of the Commissioners, Rymer, Vol. XVI. p. 324.

A Commission for the province of York, in 1599, Rymer, Vol. XVI. p. 386, contains over 130 names, of which the majority are those of lay officers, but includes archbishops, bishops, deans, archdeacons, and other clergy in fair numbers. This commission comprises directions for the preservation and registration of Acts and orders of court, but in other respects varies little from that of 1596.

The General Commission of 1601, Rymer, Vol. XVI. p. 400, is directed to the Archbishop of Canterbury, 13 bishops, five deans, one archdeacon, five doctors of divinity, the lord keeper, the treasurer, the chief secretary of state, and 26 others, judges, law officers of the crown, doctors of law, esquires, &c. This omits the directions given to the York Commission for the registration of Acts, but contains the



clause touching schools and cathedrals. This is the last commission of Elizabeth's reign which we have seen, and furnishes an example of the extent of the powers claimed by the original devisers of the court.

The first Commission of James I., Rymer, Vol. XVI. p. 546, dated August 26, 1603, is for the diocese of Winchester only; and, although it contains a considerable number of laymen, prescribes a quorum of three, of which the archbishop or bishop of the diocese is always to be one. It contains no variation of importance. The later commissions of the reign are marked by very significant alterations.

In a Commission issued April 29, 1620, Rymer, XVII., 200, the King intimates that the intention of the legislature was that such commissions should be of a temporary nature and accommodated to the accidents and varieties of the times and occasions; he therefore expands the powers of the Commissioners, and specifies with some details the offences of which they are to take cognizance. They are to inquire "as well by examination of witnesses or presentments, as also by the examination of the parties accused themselves upon their oath, where there shall first appear sufficient matter of charge, by examination of witnesses or by presentment, or by public and notorious fame, or by information of the ordinary, of all and singular apostacies, heresies, great errors of faith and religion, schisms, unlawful conventicles tending to schism against the religion and government of the church now established." Great part of the action of the Commission is directed against recusants, but the list of offences contains every description of ecclesiastical offence, corruption, contempt, and abuse, and every particular of the earlier commissions is enlarged and developed. A large section is devoted to the cognizance of matrimonial disputes; and there is a provision, new to the idea of the High Commission Court, for the issuing of Commissions of Review, on supplication to the King as of grace. A similar Commission was issued by James in 1625, Rymer, Vol. XVII., p. 648, which contains a provision that during the session of the Convocation of Canterbury, only the bishops assembled in the Convocation shall proceed to the execution of the Commission, and that in their Convocation house only; none of the other Commissioners are to meddle with them.

The Commissions of Charles I. are somewhat simpler and seem to recur to the Elizabethan model, containing, however, the provisions for executing the law against the recusants. In a Commission of 1625, Rymer, Vol. XVIII., p. 124, the statute 1 James I. against the Jesuits is included among the acts to be executed, but almost all that is distinctive of the Commissions of 1620 disappears, and the clause about Convocation is omitted; no provision is made for Commissions of Review, and the prohibition of appeals is restored. No serious change appears in any of the latter Commissions which are accessible in print. (See Rymer, *Fœdera*, XVIII., 293, 922; XIX., 487.)

The records of the trials before the High Commission Court are preserved, some in the Record Office, some in the Registry at Durham, and some in public libraries. These amply prove that the powers entrusted by the Crown to the Commissioners were freely used. Every offence that could be treated as ecclesiastical was inquired into; every offender, accused or suspected, tried and punished or acquitted; every device for obtaining information was used; every claim for the assistance of secular justice was made and as far as possible enforced; every method of instituting a suit was allowed. The domestic history of the 80 years during which the Court of High Commission existed, is full of disputes touching the limits of jurisdiction with the Courts of Common Law, in which, by application for habeas corpus or by prohibition, attempts were made to thwart the action of the Commission. Into any detail on these points it is impossible to go.

The Court of High Commission was abolished by the Long Parliament in an Act, 16 Charles, c. 11, which, so far as this court was concerned, was re-enacted by 13 Charles II., c. 12.

The Court of High Commission was for suitors a court of first instance; was open to informers of every class; proceeded on suspicion, information, presentment, or inquiry; and, except for a short time under James I., was subject to no appeal. It did not, however, supersede the courts of the ordinaries, which were held as in ancient times, and subject to ancient limitations. It was not a court of appeal from them, although suits which failed to find satisfactory conclusion before them, not unfrequently emerged before the High Commission. In almost all its business its jurisdiction was concurrent, either with the business of the lower ecclesiastical courts, or, in the execution of the religious statutes of the reign of Elizabeth, with that of tribunals created or authorised by those statutes to take cognizance of the offences described.

It is difficult to understand how, except on a plea of vital necessity, prelates like Parker, Andrews, or Laud, could have been content to act under such Commissions. It is probable that, whilst the better bishops of the time saw in some such engine the only safeguard against anarchy, inferior men who cared little for the real interests of the Church, grasped at an implement which increased their personal power and party influence. The result of the working of the court was morally bad and politically destructive.

It remains to be added that, so long as the Court of High Commission existed, no cause touching doctrine or ritual was likely to reach the Court of Delegates, even if right of appeal from the Archbishop's Court to the Delegates on such points were likely to be recognised. All important offenders were brought before the High Commission Court, and for unimportant offenders practically no appeal from the ordinary courts was possible. It should, however, be added that whilst there is among the recorded trials before the High Commission sufficient evidence of the exercise of jurisdiction in these matters, the largest proportion of offences come under the heads of misconduct and immorality of clergy and laity alike, or of proceedings in recusancy and non-conformity which were prescribed by statute.

#### IV.—THE FOLLOWING IS A LIST OF THE STATUTES WHICH WERE PASSED BETWEEN 1660 AND 1832, AFFECTING IN ANY DEFINITE WAY THE EXERCISE OF ECCLESIASTICAL JURISDICTION.

13 Chas. II. c. 12, repeals the Stat. 16, Car. I, c. 11, except so far as that act abolished in the Court of High Commission.

29 Chas. II. c. 9. "An Act for taking away the writ de hæretico comburendo." This Act provides for the maintenance of the ecclesiastical courts of atheism and blasphemy, heresy, or schism, and the right to punish by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death.

1 Will. and Mar. c. 18, s. 4. An Act exempting their Majestys' Protestant subjects dissenting from the Church of England from the penalties of certain laws; forbids that such persons shall be prosecuted in any ecclesiastical court for or by reason of their non-conforming to the Church of England. This Act is confirmed 10 Ann. c. 2, s. 7.

1 Will. and Mar. Sess. 2. c. 2. "An Act declaring the rights and liberties of the subject and settling the succession to the Crown," mentions among other tyrannical acts of the late reign the erection, the Court called the Court of Commissioners for Ecclesiastical Causes, and declares the Commission for erecting that Court, and all other commissions and courts of like nature to be illegal and pernicious.

9 and 10 Will. III. c. 32. "An Act for the more effectual suppressing of blasphemy and profaneness," makes persons convicted of such offences by the temporal courts incapable of holding offices.

12 Ann, st 2. c. 14 (on the proceedings in reference to livings in the gift of Roman Catholics).

1 George I. st. 2. c. 10. (An Act on the administration of Queen Ann's Bounty, which places donatives augmented from the Bounty under the visitation and jurisdiction of the bishop of the diocese.)

23 George II. c. 23. An Act explaining parts of the Acts of Uniformity. 13 and 14 Ch. II. and 13 Eliz.

24 George II. c. 23. An Act for correcting the calendar; revises the calendar and other tables prefixed to the Book of Common Prayer.

26 George II. c. 33. An Act for preventing clandestine marriages; s. 13 forbids suits or proceedings in ecclesiastical courts to compel the celebration of matrimony on the ground of contract; re-enacted by st. 4 George IV. c. 76, s. 27.

21 George III. c. 49. An Act for preventing the profanation of the Lord's day; s. 7 provides that the ecclesiastical jurisdiction shall not be abridged by this Act.

27 George III. c. 44. An Act to prevent frivolous and vexatious suits in ecclesiastical courts; directs that suits for defamation be commenced within six months, and forbids the commencement of suits for incontinence, or brawling in churches or churchyards, after eight months from the date of the offence.

28 George III. c. 32. Confirms the practice in ecclesiastical appeals in Ireland to that of England.

44 George III. c. 43. An Act to enforce observance of the canons and rubrics respecting the ages of persons to be ordained; contains a clause saving the right of granting faculties to the Archbishops of Canterbury and Armagh.



52 George III. c. 155, s. 13, provides for the continuance of ecclesiastical jurisdiction as unaffected by the legislation of the Act on religious worship and assemblies.

53 George III. c. 127. An Act for the better regulation of Ecclesiastical Courts in England, and for the more easy recovery of Church rates and tithes:—This Act directs the disuse of excommunication for non-appearance on citation or contempt in the face of court, or except where such excommunication is pronounced as spiritual censure in definitive sentences or interlocutory decrees having the same force for offences of ecclesiastical cognizance. A writ de contumace capiendo is substituted for the writ de excommunicato capiendo, and the regulations of the statute 5 Eliz. c. ., are extended to it. In cases where sentence of excommunication is still allowed it is to be certified to the king in chancery as before; and the excommunicate person is not to incur any civil penalty, save such imprisonment, not exceeding six months, as the Court may direct. Section 7 saves the ecclesiastical jurisdiction in determining the validity of church rates. The Act contains some minor regulations as to the conduct of proctors.

5 George IV. c. 41. A stamp Act, repealing certain duties on proceedings in Ecclesiastical Courts, and in the High Court of Delegates in ecclesiastical matters.

10 George IV. c. 53. An Act to regulate the duties, salaries, and emoluments of the officers, clerks, and ministers of certain Ecclesiastical Courts in England.

This Act was the result of the recommendations of two Royal Commissions which had inquired into the duties, &c., of the officers of the Provincial Courts of Canterbury and the Diocesan Courts of London. It directs the formation of tables of fees by the Official Principal of the Court of Arches, the Chancellor of London, and the Commissary of the Diocese of Canterbury: and of regulations for the performance of duties to be approved by the Archbishop and the Bishop of London respectively. Additional court days are to be appointed by the judges before mentioned for their several courts, and orders for expediting business, which orders, so far as they affect appeals, having been approved by the Lord Chancellor, are to be observed by the High Court of Delegates.

The Court of Peculiars may be held in Doctors' Commons, and during vacancies of Canterbury and London, the judges and officers are to hold their offices and transact business until new commissions are issued.

1 Will. IV. c. 21. An Act to improve the proceedings in prohibition and on writs of mandamus.

2 & 3 Will. IV. c. 92. An Act for transferring the powers of the High Court of Delegates, both in ecclesiastical and maritime causes to His Majesty in Council. This Act likewise forbade the issue of Commissions of Review.

#### CONCLUSIONS FROM THE EXAMINATION OF THE HISTORICAL PORTION OF THE REPORT AS TOUCHING THE JURISDICTION OF THE JUDICIAL COMMITTEE OF PRIVY COUNCIL ON APPEALS TOUCHING DOCTRINE AND DISCIPLINE.

1. That there is no evidence to show that before the Reformation appeal was allowed in suits for correction on points of doctrine or ritual, and that, although there may be instances of prosecution for heresy being instituted on the demand of the Pope, there is no instance of appeal to the Pope on a charge of heresy being allowed by the provincial courts. There are cases in which such appeal was claimed, but, by refusing the apostoli or letters of appeal, and stigmatising the appeals as frustratory or pretended, the provincial judge declined to recognise their validity, and declared in fact that there was no such custom.

2. That in the Statute 25 Hen. VIII. c. 19. no express mention is made of appeals on questions of doctrine and ritual, so as to give a new right of appeal on such points where it had not before existed; as there was no custom of appealing on such points to the Pope, it is improbable that by this Act it was intended to allow an appeal on them to the King in Chancery, i.e., to the Court of Delegates; and that, as in the same session of Parliament, an Act was passed for the repression of heresy by other means, in which no provision for appeal of any kind is made, it is improbable that it was ever intended to apply the process before the High Court of Delegates to such questions.

3. That in the Statute 1 Eliz. c. 1., by which the Queen was authorised to appoint Commissioners for the execution of all ecclesiastical jurisdiction vested in the Crown, by the action of which questions of heresy, doctrine, ritual, and

discipline generally were determined without appeal of any kind, no provision or exception is made, saving the authority of the Court of Delegates, in any sort of appeals; and the result of the creation of the Court of High Commission was to draw in to the jurisdiction of that Court all the more important causes in which such questions were concerned.

4. That, notwithstanding the existence and activity of the Court of High Commission, the jurisdiction of the diocesan and provincial courts for correction, &c. still subsisted, and was for all matters on which appeal was allowable subject to appeal to the Court of Delegates. Notwithstanding which no evidence can be produced of any cause turning on matter of doctrine being carried by appeal from the courts properly ecclesiastical to the Delegates.

5. That on the abolition of the Court of High Commission, the Court of Delegates remained the only supreme court of final ecclesiastical judicature in England, i.e., the only ecclesiastical court whose judgments were not ordinarily subject to appeal; (although, by commission of review, the judgments of the Delegates were liable to be reversed); and that, under these circumstances, the Court of Delegates is found to have entertained appeals in which questions of doctrine are involved; perhaps without due consideration of the novelty of the practice or of the importance of the principle involved. That notwithstanding this innovation, only seven causes in which such questions were involved were tried on appeal before the Delegates, and of these, in three cases, the proceedings were discontinued before a decision was arrived at; in one the sentence of the court below was confirmed; in two it was varied but not so as to protect the appellant; and in one, in which the original promoter was the appellant, the appeal was renounced. It does not therefore appear that any sufficient ground is established for regarding the Court of Delegates as a constitutional court of appeal on questions of doctrine.

6. That the practice of the Court of Delegates was simply to confirm, reject, or vary the sentence of the provincial court, without giving for their judgment any reasons that could be construed as interpretations or constructions of law of the Church of England, or be regarded as claiming the force of canons; so that, even if their right of entertaining appeals on doctrine be assumed, or their right of entertaining appeals in which even incidentally questions of doctrine were involved, and on which they might, like the courts of Common Law, have proceeded by certificate, there was no danger of the importation of new and unauthorised standards of belief or ritual into the discipline of the Church. The worst effect of a wrong decision would be the failure of justice in the particular case, and no lasting responsibility was entailed on the court of maintaining uniformity in similar cases.

7. That, when the functions of the Court of Delegates were transferred to the Judicial Committee of Privy Council, there was no express intention to create a new court of appeal on doctrine or ritual, nor any provision made for the trying of such points by judges who had either spiritual authority or theological competence; but that, owing to the infrequency of suits in which such points were involved, the transfer was made without any regard to such contingency.

8. These considerations are not addressed to the question whether there should be any appeal on points of doctrine or ritual; or how many appeals should be allowed, or to what court in final resort; but simply to the question, whether or no the Judicial Committee of Privy Council possesses, as a court of final appeal in ecclesiastical causes touching doctrine and ritual, a position historically (as well as legally) recognised by the Church and nation, as sufficiently carefully organised, and consciously and explicitly, at the time of acquiring its legal powers, invested with such powers. On the other hand, it seems that by no conscious act of the legislature, and by no conscious acquiescence of the Church, but rather by a series of overlookings and takings for granted, by the assumption of successive generations of lawyers and the laches or want of foresight on the part of the clergy, the present conditions of things has been brought about.

9. That under these circumstances the maintenance of the existing jurisdiction of the Judicial Committee of Privy Council, as a final tribunal of appeal in matters of doctrine and ritual, is not to be regarded as an essential part, or necessary historical consequence, of the Reformation settlement.



## HISTORICAL APPENDIX (II.).

**A calendar of authenticated trials for heresy in England prior to the year 1533, stating in tabular form the names of the accused, the date of the trial, the process by which it was initiated, the tribunal before which it was tried, the form of the sentence, and any further points that illustrates the nature of jurisdiction in such cases. By Canon Stubbs, D.D.**

1. The following list of early trials for heresy was drawn up in consequence of the fact that, in the examination of witnesses before the Commission in the month of June, questions were raised as to the proceedings by which heretics were tried by or before the Convocations, as to the possibility of appeal in trials for heresy, and as to the intention of the legislature with respect to the entertaining of such appeals, after the passing of the statute 25 Hen. VIII. c. 19, by the Court of Delegates.

2. The Calendar will be found important as illustrating:—(1) The variety of ways in which the ecclesiastical and civil administrations co-operated in the repression of heresy from the time at which the persecution of Wycliffe and the Lollards began to the time at which, by the maturing of the English canon law under the influence of Lyndwood, the proceedings against heresy fell into the ordinary groove of canonical procedure; (2) the character of the jurisdiction exercised by the Archbishops and Bishops in the Convocations in determining what constituted heresy, in exhibiting articles against particular heretics, in examining them and arguing with them with a view to abjuration, in determining their guilt or measure of guilt, in pronouncing sentence, and in the employment of the secular arm; (3) the character of process before the ordinary, or before the Convocation at the instance of the ordinary, including the questions of possibility of appeal, either to the King or to the Pope, or from a lower court to a superior court, the result being to show that the proceeding was summary, and that appeals were not admitted; (4) the important question whether Henry VIII., who, coincidently with his legislation on appeals, was establishing a new procedure for the repression of heresy, contemplated the trial of appeals on matters of doctrine before the delegates to be appointed under the statute 25 Hen. VIII. c. 19; and (5) the general subject of synodical trial of heretics.

3. It has been thought unnecessary to give any details as to the proceedings in heresy which are to be discovered before the year 1377, partly because the records of such cases are few and obscure, and partly because, so far as they can be made out, they have no bearing on the history of procedure. It may, however, save trouble to enumerate them here:—

1. A.D. 1166, in a council at Oxford, in which the King and Bishops were present, certain heretics were brought to trial, examined, found guilty, excommunicated, branded on the face, and expelled from the kingdom. They are described as foreigners. In the assize of Clarendon shortly after, the King ordered that no one should receive them, and the house in which they had lodged should be burned.
2. In 1210 an Albigensian was burned in London; this was during the interdict, when no ecclesiastical proceedings could take place, and the execution must have been either the result of popular fervour, or an infliction of the common law punishment of heresy without lawful trial.
3. In 1222, in an ecclesiastical council at Oxford, an apostate deacon who had become a Jew was convicted, degraded, and, being delivered to the secular court, was burned.
4. A.D. 1236. Prynne, Records, ii. 475, gives a writ of Henry III. to the sheriff of Yorkshire, commanding him to arrest and imprison, until the King should give further orders, a heretic whom the prior of the Dominicans without proper jurisdiction had ordered to be arrested, and others accused of the same offence; and A.D. 1240 a Carthusian at Cambridge was arrested and sent before the legate for speaking heretically against the pope; *ibid.* p. 560; M. Paris, p. 533. Nothing is known of the further treatment of these cases, which are however important as showing the activity of the temporal power in the repression of heresy, which, as we learn from Britton, liv. i. c. 30, was a matter of inquiry, at the sheriff's tourn, and which, by the common law, was published by burning; *ib.* i. c. 10; Fleta, lib. i. c. 37; Bracton, f. 124.
5. The proceedings against the Templars were discussed in provincial councils in 1311 and 1312; but the examination of the accused and other legal proceedings were taken before special inquisitors under papal instructions.
6. During the persecution of the Franciscans in 1330 some of the friars are said to have been burned in England; but no record is forthcoming on the subject, and the authority is not trustworthy. There is, however, a case of an apostate Franciscan brought as a heretic before the Bishop of London in 1336, and by him imprisoned at Stortford, where he died.

Although these are all the recorded instances, it is certain that by the common law of England burning was the punishment of heresy, and that unrecorded cases may have occurred in which that punishment would be inflicted as a matter of course after canonical trial and refusal to recant or relapse.

4. After the year at which it has been thought best to close the following list, there are to be found in the episcopal registers of the various dioceses large numbers of cases of procedure in heresy, which, however, do not differ in any important point, except the conclusion in abjuration or punishment, from ordinary trials for other ecclesiastical offences. Of these the great majority fall in the first 30 years of the 16th century, when the repressive zeal of the kings and prelates seems to have been stimulated by the example of the Spanish Inquisition; and indeed Chapuys regarded the English proceedings as even more severe than the Spanish. Foxe has collected great numbers of these from the registers of London, Lincoln, and Norwich; a few more are to be found in those of Winchester, Bath, and Wells, Ely, and Exeter, which have, as well as those of Canterbury and London, been examined for the purpose of this return; and unquestionably the records of other dioceses would supply others. As, however, it has been found that in the cases which are accessible no material additions can be made to these illustrations of the subject, and as it would be a work of great cost and much time to produce an exhaustive list, it has been thought best to confine the following Calendar to the period during which the procedure was being developed into its permanent shape of summary trial, examination, and sentence before the ordinary ecclesiastical courts, which may be regarded as completed under the eye of the canonist Lyndwood, who died in 1446.—The notes on the cases of Bilney, Crome, and Latimer are added as illustrations of trial conducted whilst the old system was breaking down.

A list is prefixed of the statutes and chief constitutions under which the proceedings were slightly modified during the period of these trials.



## A LIST of STATUTES and CONSTITUTIONS touching the trial and punishment of heresy.

(1.) Stat. 5 Ric. II. st. 2. c. 5. Forasmuch as divers unlicensed preachers are going about preaching heresy, and also matters of slander to engender dissension between the estates of the realm, not obeying the citations of ordinaries, and inciting the people to maintain them by strong hand, it is enacted that "the King's Commissions be directed to the sheriffs and other ministers of the King, or to other sufficient persons, after and according to the certificates of the prelates made thereof in Chancery from time to time, to arrest all such preachers and their fautors, maintainers, and abettors, and to keep them in arrest and strong prison till they will justify themselves according to reason and the law of the Holy Church; and the King wills and commands that the Chancellor make such commissions at all times, that he, by the prelates or any of them, be certified and thereof required, as is aforesaid."

[This Act was passed in the parliament which sat May 7-22, 1382. In the following session, held after a new election and a change in the Chancellorship, the Commons petitioned for the annulling of the Act as passed without their consent. But this had no effect, and it remained in force.]

(2.) Condemnation of ten heretical and fourteen erroneous conclusions by the Archbishop of Canterbury and a body of bishops and doctors at Blackfriars, May 17-21, 1382; followed by a mandate to the Bishop of London to publish monitions, &c. against them, May 31.

(3.) Writ of Richard II. empowering the Archbishop and his suffragans to arrest, and commit to their own or other prisons, persons who preach or maintain the condemned conclusions, and to keep them imprisoned until they repent or it shall be otherwise provided by the King or his Council, and enjoining on all his liege servants and subjects not to maintain the offenders, but to help the Bishops and their servants; dated July 12, 1382.

(4.) Stat. 2 Hen. IV. c. 15. Whereas the preachers of the new sect are teaching heretical and erroneous doctrine, and the Bishops cannot by their spiritual jurisdiction, without the King's aid, sufficiently correct them, it is enacted that none preach without licence from his diocesan, or write against the faith, or hold schools, or any way favour these doctrines. If any one offend against this order, the diocesan may arrest and imprison him until he purges himself or abjures, so that proceedings be determined according to the canonical decrees within three months; if he be convicted he may be imprisoned at the discretion of the diocesan and fined; if he refuse to abjure or relapse after abjuration, so that according to the canons he ought to be left to the secular arm, the sheriff or other secular magistrate shall, after sentence, receive him and have him burnt.

(5.) Rot. Parl. A.D. 1406, Dec. 22. Ordinance authorized by the King, on the petition of the Lords Spiritual and Temporal and the Commons, to be held for a statute until the next parliament. In the view of the attempts made to move the people to despoil the prelates of their temporal possessions, and to sow dissension between the several estates, to the future injury of the Lords Temporal and subversion of the kingdom, by false teaching, lying reports, and false prophecies, any man or woman who preaches or teaches contrary to the Catholic faith or disseminates such false reports or false prophecies, shall be arrested and imprisoned, without being delivered on bail, except by mainprise, to be taken before the Lord Chancellor, for their being bodily brought before the next parliament to answer and receive and await such judgments as they shall have deserved and shall be passed on them by the King, his heirs, and the peers of the realm; and in this mainprise it is to be comprised that they shall not maintain, preach, or publish such things in the meantime. Also, the Lords Spiritual and Temporal, the justices of both benches, justices and guardians of the peace, justices of assize, sheriffs, mayors, bailiffs, and other ministers, by this statute have power and authority and are to be bound to take all such persons, and to inquire and take inquests in that behalf, by virtue of this statute, without any other commission.

(6.) Constitution of Archbishop Arundel, 1409 Jan. 14, No. 13:—As the crime of heresy is parallel with or greater than that of high treason in which proceedings are "*summariè et de plano*," it is ordered that when the accused person has been cited, "on reception of a lawful certificate of such citation executed, it shall be proceeded against the person so cited, to the reception of witnesses and other canonical proofs, even if he be absent and neglecting to appear, in punishment of his contumacy, "*summariè et de plano, absque strepitu et figura iudicii, ac lite non contestata*;" also, lawful information had, the ordinary without any delay shall sentence, declare, and punish him according to the quality of the delict.

(7.) Stat. 2 Hen. V. c. 7. A.D. 1414. In order to provide a remedy against existing and possible evils from Lollardy, it is enacted that the Chancellor, judges, justices of the peace, sheriffs, mayors, bailiffs, and other officers, shall take an oath to exert their whole power to put down heresy, and to assist the ordinaries and their commissaries as often as they are required; all persons convicted of heresy and left to the secular arm shall forfeit lands and goods; justices of bench, of peace, and of assize shall have power to inquire of all who hold any errors or heresies, and if any person be indicted the said justices have power to award a *capias* against them, and the sheriff shall be bound to arrest the persons so indicted, "and forasmuch as the cognizance of heresy, errors, and Lollardies belongeth to the judges of Holy Church, and not to secular judges," they are to be delivered to the ordinaries within ten days; precautions are taken that the indictments may not produce a confusion between the secular and ecclesiastical procedure; and the qualification of jurors, to assist in the inquests held by the justices, is fixed, &c.

(8.) Constitution of Archbishop Chichele, July 1, 1416. All Bishops and archdeacons shall make inquiry in every rural deanery twice a year, by themselves or their commissaries, concerning persons suspected of heresy; and in each deanery and parish in which there is a report that heretics are dwelling they shall cause three or four men of good character to swear that they will denounce heretics and their fautors to the Bishops or the archdeacons, who are to report the circumstances secretly under seal to the diocesans; the diocesans are to take legitimate proceedings against them, to determine, define, and execute; and if they do not leave any to the secular court, they are to commit them to prison perpetual or temporary, to continue, as the quality of the matter demands, at least until the next Convocation; and to certify the whole of the proceedings to the Archbishop in the next Convocation, and to deliver the process to the official to remain in the register of the Court of Canterbury.



## A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533.

Date.	Name.	Process by which the Suit was initiated,	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1377	John Wycliffe (1) - -	Citation by the Archbishop, at the instance of the Bishops in Convocation, "ut astare deberet coram episcoporum collegio."	The Archbishop, Bishop of London, and others in the Lady Chapel of S. Paul's; also described as "coram ordinario suo;" Feb. 19. Chron. Angliæ, p. 119. The proceedings were stopped by a rising of the Londoners.		
1377-8	John Wycliffe (2) - -	Papal bull of May 22, 1377, issued "plurimum fidedignorum relatione."	The Archbishop and Bishop of London, as judges delegate, named in the bull. They cite Wycliffe to appear at S. Paul's on the thirtieth day, by writ of Dec. 28. The place was afterwards changed, and the proceedings which took place at Lambeth were stopped by a letter from the Princess of Wales, forbidding further action.	- - - -	The letter of the princess forbids "ne præsumerent aliquid contra ipsum Johannem sententia-liter diffinire." Chron. Angl., p. 183.
1381	John Wycliffe (3) - -	- - - -	The Chancellor of the University of Oxford, proceeding "de concilio doctorum theologiæ et juris canonici."	Condemnation of certain assertions as erroneous and repugnant to the determination of the Church; with general inhibition after three monitions against preaching such opinions, under penalty of imprisonment, suspension from scholastic acts, and excommunication.	Wycliffe appeals to the King against the sentence of the Chancellor, but the Duke of Lancaster comes to Oxford and orders him to keep silence. See Fasciculi Zizaniorum, pp. 1-114. Possibly these proceedings may belong to the next year.
1382	John Wycliffe (4) - -	- - - -	The Archbishop and an assembly of Bishops and doctors assembled at Blackfriars, May 17-21.	Condemnation of heretical propositions, and general inhibition after three monitions; with special direction against Wycliffe, Hereford, Repingdon, Ashton, and Bedeman, dated June 12.	



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1382	Nicolas Hereford. Philip Repingdon. John Ashton. Laurence Bedeman.	Proceedings are begun by the Archbishop himself, in consequence of the determination of the theologians at Blackfriars in May. June 12, he directs the Chancellor of Oxford to inhibit Wycliffe and the rest from preaching. After an attempted appeal to the Duke of Lancaster, on the ground that their suspension was a contempt of temporal rights, which the duke rejected ( <i>Fasc. Zizan.</i> , p. 318); June 18, at Blackfriars, the four accused appear before him. June 20, June 27, and July 1, further proceedings are taken; and the matters are concluded for the present, during the session of Convocation of the clergy at Oxford, Nov. 18–24.	- - - - -	Hereford and Repingdon are pronounced contumacious by the Archbishop, July 1. They appeal to the Pope. The Archbishop rejects the appeal as frivolous by letter issued in lieu of <i>apostoli</i> , or letter dimissory, July 12; they are declared excommunicate, July 13, 16, and 30. Ashton is declared heretical, June 20.	<i>Hereford</i> remains contumacious; the Archbishop writes to the King for his apprehension, Jan. 23, 1383; he is said afterwards to have made his way to Rome and to have complained to the Pope. He was denounced as excommunicate by the Archbishop, Aug. 29, 1386, and a letter written to the King for his arrest, Jan. 15, 1387; he had recanted before 1393. <i>Repingdon</i> , after abjuration, is restored to his academic status at Oxford, Oct. 23. A detailed report of the proceedings is in the <i>Fasciculi Zizaniorum</i> , pp. 274–329. <i>Ashton</i> restored to his academic status at Oxford, Nov. 27. <i>Bedeman</i> , after abjuration, is restored to his academic status at Oxford, Oct. 18. Some documents relating to his preaching are in the register of the Bishop of Exeter.
1382	William Swinderby, priest of the diocese of Lincoln.	Denounced by three friars, doctors of divinity.	Tried by the Bishop of Lincoln “una cum communi sariis nostris memoratis in ecclesia nostra” Lincolnensi in causa hujusmodi pro tribunali “sedentes;” appears and appeals to the King and the hearing of the Duke of Lancaster; the cause is prolonged and comes before Parliament at London, and by decree of Parliament is remitted to the Bishop. The accused is convicted and submits.	Is ordered to read his recantation in eight churches, July 11, 1382. <i>Fascic. Zizan.</i> , p. 340.	Further proceedings were taken against him in the diocese of Hereford, in 1391; see below.
1384	William Buxton, “episcopus Maragaensis.”	Brought by the Archbishop before the King and Council Nov. 19, as a schismatic supporter of the anti-pope, arrested by Royal writ.	Examined by the Archbishop before the Council; acknowledges his adhesion to the anti-pope, but expresses his willingness to submit if convinced. The Archbishop refuses leave for argument on the subject, lest the decision of the Parliament of Gloucester in 1378, by which Urban VI. was recognised as Pope, should be put in doubt; notwithstanding which the Bishops of Ely, Salisbury, and Rochester are appointed by the King and Lords to hear the accused, who agreed to submit to their decision.	At the request of the Archbishop, the King ordered the accused to be committed to prison at Blackfriars until the Apostolic See should determine about him.	Wilkins, <i>Conc.</i> , iii., 191.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1389	Roger Dexter. Nicolas Tailor. Richard Waytstach, chaplain. Michael Scryvener. William Smith. John Harry. William Parchmener. Roger Goldsmith. Matilda, a recluse.	Information of good men, ecclesiastics and laymen, laid before the Archbishop in his visitation at Leicester, Oct. 31.  Information laid Nov. 2 at Leicester.	Witnesses heard before the Archbishop himself, and the accused are excommunicated, Nov. 2.  Examined by messengers of the Archbishop; ordered to appear before him at Northampton, Nov. 6.	Mandate to declare the accused excommunicate, Nov. 7, and order to the sheriff to arrest them under the King's writ of July 12, 1382.  - - - - -	Roger Dexter and William Smith and Alice his wife confessed, submitted, did penance, and were absolved; <i>see</i> the letters dated Dorchester, Nov. 17, 1389. Waytstach was restored the same day. Reg. Courtenay. (Wilk., Conc., iii. 208, 209). Matilda recanted, and had 40 days' penance. Foxe, iii. 200.
1391	William Swinderby, a priest of the diocese of Lincoln. ( <i>See</i> above, A.D. 1382.)          Stephen Bell - - - - -	Information of faithful people exhibited to the Bishop of Hereford at Kington, June 14, 1391.          - - - - -	Citation ordered by the Bishop's writ July 5, 1391; the Bishop sits July 20, 29, Aug. 8, 16, the accused not appearing; and on other days not specified; the date of the sentence is not given, but on the 3rd of October the accused apparently made his protest and appealed to the King and Council; and that appears from other documents to have been the day of decision. <i>See</i> Foxe, iii. 126, 135.          Tried before the Bishop of Hereford, either with Swinderby or about the same time, and by the same process.	The sentence is passed by the Bishop of Hereford, who, "pro tribunali sedens," "with mature deliberation" had before in this "behalf with masters and doctors of divinity, and also of other faculties, with their council and consent," does pronounce Swinderby heretical and to be avoided of all faithful Christians. In spite of Swinderby's appeal, the King, by letters dated March 9, 1392, empowered the Bishop to arrest and imprison him; and if he will not obey the Church, to bring him before the King and Council, that it may be determined what the further punishment should be. Foxe, iii. 195, 196. As in Swinderby's case, Foxe, iii. 195, 196.	Swinderby's appeal to the King against the episcopal sentence is founded on five causes :— 1. The fact that the King's Court is above the Bishop's, which can proceed no further than the excommunication without a writ of significavit. 2. The fact that death is the punishment due to heresy, and death cannot be inflicted without the King's justices. 3. That the judgment is false. 4. That the Bishop's law is heretical. 5. That the Pope's law is that by which Christ was crucified. The first two points only are important, but their value is impaired by the fact that it is uncertain at what time the protest and appeal were put in their present form.
1392	Walter Brute, a layman of the diocese of Hereford.	Two public instruments exhibited by the penitentiary of the diocese; and articles exhibited by certain priests and friars.	Before the Bishop of Hereford, sitting in judgment on several days, apparently extending to Oct. 3, 1393, on which day the accused appeared before the Bishop, having for his assistants divers prelates and abbots, and 20 bachelors of divinity, and two doctors of law.	A Royal Commission for the arrest of Brute and his followers was signed Sept. 23, 1393. After discussion the accused submitted, Oct. 6, 1393, Foxe, iii., 187, 197; Prynne, 4th Inst., pp. 227, 228.	



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1393	Henry Crompe, a Cistercian -	Examined by the Archbishop in a Convocation at Stamford, May 8, 1392.	Abjures - - - - -	- - - - -	Fasc. Ziz., p. 343.
1396	William Dynot. Nicolas Taylleur. Richard Poucher. William Stoyour, of Nottingham.	- - - - -	Their abjuration was made in the Court of Chancery, Sept. 1, 1396.	- - - - -	Rot. Claus., 19 Rich. II.; Wilkins, Conc., iii. 225.
1399	William Sawtre, alias Chatrys, chaplain of the parish church of S. Margaret, Lynn.	- - - - -	The accused appeared before the Bishop of Norwich, on April 30 and May 1, 1399, in the manor of Southelmham, and acknowledged certain heretical tenets; these he renounced in the chapel of the same manor before the Bishop on the 19th of May; on the 25th of May he publicly declared his renunciation at Lynn, and on the 26th swore to preach such doctrines no more.	- - - - -	In the Fasciculi Zizaniorum, p. 408, is a protest and appeal to the King in Parliament; dated by Dr. Shirley, April 30, 1399.
1400	John Becket, of Padswick, in the diocese of London.	- - - - -	The accused abjures before the Archbishop at Slyndon June 10, 1400, and is released from the sentence of excommunication.	- - - - -	Reg. Arundel, fo. 228; Wilkins, Conc., iii. 247.
1401	William Sawtre, alias Chatrys, chaplain of S. Syth, London.	He is brought before the provincial council in the chapterhouse of S. Paul's, by mandate of the Archbishop, as having preached heretical doctrines which he had previously abjured, Feb. 12, 1401.	In Convocation, the accused having, Feb. 12, demanded a copy of the articles alleged against him, appears, Feb. 18, "coram prædicto reverendissimo patre et concilio suo tunc ibidem congregato," and makes his answer. He is further examined before the same body on the 19th, and pronounced by the Archbishop to be a heretic. On the 23rd the Bishop of Norwich presents the record of his abjuration, and he is pronounced to be a relapsed heretic. On the 26th he is degraded from his orders and delivered to the secular court; the King's writ for his execution is issued the same day.  "rum pro tunc ibidem præsentium in consilio." The degradation is decreed by the Archbishop against the accused as "hæreticum et in hæresin relapsam per nostram sententiam definitivam condemnatum, de consilio assensu et auctoritate ac conclusione etiam omnium confratrum nostrorum coepiscoporum et prælatorum ac totius cleri concilii nostri provincialis." This is done in the presence of the court secular of the constable and marshal of the realm of England, and that Court is prayed to regard the culprit as "favorabiliter recommissum."	The sentence of heresy is given by the Archbishop "de confratrum et suffraganeorum nostrorum in præsentî concilio provinciali nobis assistentium, et totius cleri consilio et assensu." The sentence of relapse is by the Archbishop "de consilio et assensu totius concilii, præsertim cum consilio et assensu venerabilium patrum dominorum episcoporum, necnon priorum, decanorum, et archidiaconorum ac aliorum venerabilium doctorum et clericorum." The degradation is decreed by the Archbishop against the accused as "hæreticum et in hæresin relapsam per nostram sententiam definitivam condemnatum, de consilio assensu et auctoritate ac conclusione etiam omnium confratrum nostrorum coepiscoporum et prælatorum ac totius cleri concilii nostri provincialis." This is done in the presence of the court secular of the constable and marshal of the realm of England, and that Court is prayed to regard the culprit as "favorabiliter recommissum."	See Foxe, iii, 221-229; Wilkins, Conc., iii. 254-263. Six Bishops were required for the degradation of a priest; "si quis tumidus," 3; and cap. Felix 4, caus. 15, cap. 7. (Ferraris, <i>Degradatio</i> ).



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1401	John Purvey, a priest of the diocese of Lincoln.	The accused appears before Archbishop in Convocation on the 28th of February, as "suspectus, infamatus, accusatus;" and the Archbishop himself presents the articles against him.	The Archbishop, being otherwise employed, appoints the Bishops of Bangor and Rochester to act as his substitutes to hear the accused, to examine his errors, and "cum consilio sacræ theologiæ professorum et decretorum doctorum et aliorum jurisperitorum ipsius convocationis," to discuss and fully determine. On the 5th of March Purvey submitted and abjured, and on the 6th read his recantation at Paul's Cross.	- - - -	Fascic. Ziz., p. 400. Wilkins, Conc., iii. 260. Foxe, iii. 285.
1401	John Seynonus, of the parish of Downton, in the diocese of Lincoln.	- - - -	Abjuration at Canterbury before the Archbishop on the feast of S. Elfege.	- - - -	Misplaced in Wilkins, Conc., iii. 248.
1401	- - - -	Commission of the Archbishop to William Milton, canon of Salisbury to inquire concerning heretical pravity at Bristol.	- - - -	- - - -	Wilkins, Conc., iii. 265.
1402	- - - -	Commission of the Archbishop to the rector of Wigston to cite Lollards in the diocese of Lincoln.	- - - -	- - - -	Wilkins, Conc., iii. 270.
1402	Richard Herbert. John Seygno. Emmota Wylly.	"Officio reverendissimi patris archiepiscopi" detected and delated; in Convocation, October 27.	The proceedings are recorded as taking place before the Archbishop in Convocation at S. Paul's, "una cum suffraganeis suis accedens et sedem capiens more solito, dictis suffraganeis sibi assistantibus ex utroque latere, et deinde circumquaque sedentibus aliis pluribus dictæ provinciæ prælatis et clero circumstantibus." Wilkins, Conc., iii. 271.	Herbert denies and abjures - Seygno, having abjured at Canterbury in 1401, is delivered by the Archbishop to his ordinary, the Bishop of London, to be imprisoned until, according to the advice and discretion of his suffragans, he shall otherwise determine about him. Emmota Wylly confesses and abjures.	Wilkins, Conc., iii. 270-272.
1405	John Edward, chaplain of Brington, in the diocese of Lincoln.	"Coram reverendo patre domino Henrico episco Norwicensi— "ad judicium evocatus et judicialiter impetitus."	Abjures before the Bishop at Norwich, April 12	- - - -	Wilkins, Conc., iii. 282.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1407	William Thorpe - -	A certificate, under the seal of the bailiffs of Shrewsbury, of heresies preached in S. Chad's church on the 3rd Sunday after Easter 1407, with a prayer from the bailiffs and community that he may be declared heretical.	He is brought up in custody from Shrewsbury before the Archbishop at Saltwood. The Archbishop, on the 7th of August, examines him in the presence of a physician named Malvern, who was parson of S. Dunstan's, and two lawyers. After this Thorpe was committed to prison; and no more is known about him.	- - - -	Foxe, iii. 249-285.
1409	John Badby, of the diocese of Worcester, a tailor.	"A diversis Christi fidelibus impetitus pariter et detectus," before the Bishop of Worcester, at Worcester, Jan. 2, 1409.	Before the Bishop of Worcester, in the presence of several clerks and laymen specially called to attend as witnesses of the proceedings.	The sentence runs in the name of the Bishop alone, and declares Badby a heretic, "confessed and lawfully convicted."	Wilkins, Conc., iii. 325.
1410	John Whitheyd, S.T.P. -	A bill of accusation presented by the Friars Preachers to the Archbishop and Bishops in Convocation, the Archbishop of York and Bishop of Durham being likewise present, Feb. 17, 1409.	In the session of Convocation, on Feb. 24, the accused replies to the articles of accusation, and declares himself willing to submit if the charges can be canonically proved.	No record of further proceedings -	Wilkins, Conc., iii. 324.
1410	John Badby, of the diocese of Worcester.	The accused is brought up by the Archbishop for examination on the articles of heresy of which he was declared guilty in January 1409, in the Convocation on March 1, 1410.	The examination is conducted before the Archbishop of Canterbury, in the presence of the Archbishop of York, eight Bishops, the Duke of York, the Lord Chancellor, the Lord De Roos, the Clerk of the Rolls, and other Lords Spiritual and Temporal in great numbers; the notarial copy of the proceedings at Worcester is put in, and the accused is examined and argued with by the Archbishop. On the 5th of March he is again heard, and refuses to renounce his heresy; whereupon the Archbishop confirms the sentence of the Bishop of Worcester.	The sentence is pronounced by the Archbishop alone, who is described as sitting with the aforesaid Lords Spiritual and Temporal. He publicly declares Badby to be a heretic, and delivers him to the secular arm, urgently supplicating the Lords Temporal there present that he may not be punished with death. He is burned at Smithfield the same day, "ex decreto regio."	This is the first trial and execution under the statute <i>De heretico comburendo</i> , passed in 1401; which is transcribed here into the record of the Convocation, Wilk., Conc., iii. 324-329. If, however, the words " <i>ex decreto regio</i> " mean a special Royal writ, the proceeding was still exceptional. See Foxe, iii. 821.
1410	William Swan - -	Commission issued by the Archbishop for citation of Swan as a blasphemer against the Council of Pisa, July 23.	- - - - -	- - - - -	Wilkins, Conc., iii. 332.
1413	John Lay, a chaplain officiating at Nottingham.	Information laid before the Archbishop's registrar, in the Convocation held March 6, against Lay, as having preached before Lord Cobham, &c.	Examined by the registrar, who fixes a day for his appearance before the Archbishop to show his letters of orders, &c.	- - - - -	Wilkins, Conc., iii. 338.



Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1413	Sir John Oldcastle. Lord Cobham.	"In dicta Convocatione fuit detectus per totum clerum pro- vinciæ Cantuariensis." The clergy supplicate the Archbishop and prelates that Oldcastle may be called before them to answer the charges publicly laid against him; June 26.	The Archbishop, having received the supplication of the clergy, consulted the King, who requested him to defer proceeding against Cobham until he had tried to convince him of his errors. Having failed to do this, the King, on August 15, sent for the Archbishop and urged him to proceed "juxta canonicas sanctiones." The Archbishop having failed to get a personal citation served on Cobham, who had shut himself up in Cowling Castle, ordered the summons to be fixed on the door of Rochester Cathedral, citing him to appear on the 11th of September, at Leedes Castle. On that day not appearing, he was declared contumacious and excommunicated by the Archbishop, who ordered him to be arrested and to appear before him on the 23rd of September. On that day Cobham was brought by Sir Robert Morley, keeper of the Tower, before the Archbishop, sitting in the chapterhouse of S. Paul's, "assidentibus . . . Ric. London et Henr. Winton . . . episcopis." After discussion and examination on the 23rd and 25th of September, Cobham, persisting in his own statements and refusing submission, was pronounced a heretic and convict, to be left to the secular arm, and excommunicated. Notice of the sentence was sent to the Bishop of London Oct. 11, and published by him Oct. 23.	The sentence is given by the Archbishop "de consilio et assensu "magnæ discretionis et sapientie virorum, venerabilium "fratrum nostrorum, Ricardi "Londoniensis, Hearici Wintoniensis et Benedicti Bangorensis episcoporum, ac aliorum "nonnullorum in S. Theologia, "decretis, et jure civili doctorum "aliarumque religiosarum et "peritarum personarum, nobis "assistentium."	Wilkins, Conc., iii. 351-357. Foxe (iii. 325 sc.) places between the day of the citation and the 23rd of September a personal application made by Cobham to the King, with a confession of faith and an offer to purge himself with the oaths of a hundred knights and squires; he then proposed an appeal to the Pope, which the King forbade. Cobham escaped from the Tower, and in 1414 was outlawed for his presumed share in the rising of the Lollards. He was not captured until 1417, when, after a reading of the Archbishop's sentences of excommunication, and the sentence of outlawry issued by the justices, he was condemned to death by the Duke of Bedford and the Lords in Parliament, and executed Dec. 14. The proceedings against Oldcastle at S. Paul's and the writ of excommunication of Oct. 23, 1413, are in Beaufort's Register at Winchester, in Repingdon's at Lincoln, &c.
1415	John Claydon, a skinner of the city of London.	Arrested by the Lord Mayor on suspicion of heresy, in which he had been involved for 20 years, and had been imprisoned at Conway and in the Fleet, and had abjured before John Scarle when Chancellor. He had also abjured before Archbishop Arundel in the Convocation of 1413.	He is brought before the Archbishop, with the Bishops of London and Lichfield sitting <i>pro tribunali</i> in the chapterhouse of S. Paul's, August 17, 1415, and examined on that day and on the 19th, on which day he is declared a relapsed heretic, and to be left to the secular arm.	The sentence runs in the name of the Archbishop "de consilio et assensu" of the Bishops and other doctors of divinity and canon and civil law, and of other skilled persons assisting.	Wilkins, Conc., iii. 371-375. The proceedings did not take place in Convocation, which was not sitting. Claydon was burnt. Gregory, Chron., p. 108.
	Richard Turming, baker	- - -	- - -	- - -	Turming was burnt. Foxe, iii. 534; Gregory, Chr., p. 108.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1416	John Barton - -	Appears in Convocation and abjures Nov. 23.	Testimonial of abjuration dated at Reading, May 11, 1417.	- - - -	Wilkins, Conc., iii. 377. Foxe describes him as having been excommunicated some six or seven years before, and committed to the custody of the Bishop of Lincoln.
1416	Robert Chapel, a chaplain of Lord Cobham.	Excommunicated by the Bishop of Rochester.	Brought before the Archbishop and Bishops July 12, 1416; abjures and submits.	- - - -	Foxe, iii. 536., Reg. Chichele, 323, sq.
1416	Thomas Crompe, of Hereford -	Had been denounced for heresy before Archbishop Arundel; an accomplice of Oldcastle.	Abjures. Letter of testimonial, dated May 17, 1416.	- - - -	Reg. Chichele.
1417	John Taylor of S. Michael's, Cornhill.	- - - -	Testimonial of abjuration dated at Maidstone, March 18, 1417.	- - - -	Reg. Chichele; Foxe, iii. 537.
1419	Ralph Owtrede, chaplain.  William Browne, chaplain.	Having been for several years imprisoned on suspicion of heresy, he is brought before the Archbishop in Convocation on Nov. 8, to determine what is to be done. On that day he is sent back to prison. A prisoner, brought before the Archbishop in Convocation, Nov. 20.	Owtrede and Browne, on the 20th November, were brought before the Archbishop and his brethren in the provincial council; it was determined that they should be allowed to abjure, and in case of relapse be punished as heretics relapsed. After abjuration the two are sent to the Lord Chancellor to find security for their good behaviour.	The determination is made, after exposition by the Archbishop to his brethren and the whole council, "ex deliberatione communi totius concilii."	The proceedings are under the constitution of Archbishop Chicheley. Wilkins, iii. 378.
1419	Richard Wyche - -	A prisoner, brought before the Archbishop in Convocation, Nov. 20, having been condemned and imprisoned in the north, and afterwards brought up to Westminster and released in Chancery; again arrested and imprisoned on the same charge.	Wyche, after confession before the Archbishop and Bishops, is, by determination of the whole council, sent to the Fleet to be imprisoned until a final determination can be settled what is to be done with him.	"Dominus ex consensu fratrum "suorum et communi deliberatione totius concilii remisit, "&c."	Wilkins, iii. 395. Wyche's recantation, printed in the Fasciculi Zizaniorum, p. 501, belongs to the proceedings before Walter Skirlaw, Bishop of Durham, before the year 1405. (See below, A.D. 1440.)
1420	William Tailour, priest (1) -	Presents himself, Feb. 12, to the Archbishop, in the library at Lambeth, as an excommunicate person desiring absolution on abjuration.	The Archbishop, on the 14th of February, absolves him, and orders him to appear in the next Convocation to have penance assigned him before the whole clergy.	- - - -	Wilkins, Conc., iii. 404.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1420	William James, master of arts	A prisoner for many years, presents himself voluntarily before the Archbishop, March 31, for abjuration.	The Archbishop receives the abjuration, and allows the prisoner to practise medicine under custody within the manor of Maidstone, being bound by oath not to go out of it under penalty of heresy.	- - - -	Wilkins, Conc., iii. 397
1421	William Tailour, priest (2) -	Appears in Convocation, May 24, in the custody of the Bishop of Worcester, having preached heresy at Bristol.	He is allowed to discuss his opinions with certain theologians, May 26, confesses his errors, and is condemned to perpetual imprisonment, which is afterwards mitigated to allow him to be released on finding security in Chancery.	The sentence is passed by the Archbishop "habitis super hoc deliberatione et avisamento cum confratribus suis et clero, toto eodem concilio, ut apparuit ap probante;" and the mitigation is allowed by the Archbishop and Bishops "auctoritateque concilii."	Wilkins, Conc., iii. 406.
1422	Henry Webb, of Batheaston -	Brought by the Bishop of Worcester before the Archbishop, prelates, and clergy in Convocation, July 11, for having performed priestly functions not being ordained.	He confesses his crime, and is sentenced to be flogged through London, Worcester, and Bath.	"Dominus archiepiscopus, toto approbante concilio, injunxit," &c.	Wilkins, Conc., iii. 404.
1422	William Whyte, a chaplain -	Brought by the Archbishop before Convocation, as having been long imprisoned, July 11.	He is allowed to abjure, under penalty of being treated as a relapsed heretic.	"Toto approbante concilio, dominus decrevit."	Wilkins, Conc., iii. 404.
1423	William Tailour, priest (3) -	Brought before the Archbishop at Blackfriars, Feb. 11, "assistentibus sibi," the Bishops of S. David's, Hereford, and Worcester, William Lyndwood, doctor of both laws, official of Canterbury, the Dean of the Arches, and the Archbishop's chancellor, with many others, as a heretic arrested after abjuration.	One of his heretical writings is produced and referred to four doctors of divinity, who, on Feb. 20, report that it is heretical, before an assembly similarly constituted in the chapterhouse of S. Paul's. Four articles are then extracted, which, on the 25th, are reported heretical. The Archbishop then refers to the jurists certain questions as to the treatment of relapsed heretics, which are answered by Lyndwood and others. After evidence taken, the Archbishop, on the 27th, at S. Paul's, pronounces Tailour a relapsed heretic. On the 1st of March the Archbishop degrades him and leaves him to the secular court.	The sentence of relapse is pronounced by the Archbishop "de consilio confratrum et coepiscoporum nostrorum nobis assidentium, ac aliorum doctorum et clericorum in lege divina et sacris canonibus peritorum, hic præsentium." The sentences of degradation are passed "de consilio et assensu, et auctoritate et conclusione etiam confratrum, &c."	Wilkins, Conc., iii. 407-412. These proceedings are not taken in Convocation. <i>See also</i> Fasc. Ziz., p. 412. He was burnt. Gregory, Chron., p. 149.
1424	John Florence, turner, of Shelton, d. Norwich.	Brought before William Bernham, chancellor of the Bishop of Norwich, Aug. 2.	Abjures and does penance - - -	- - - -	Foxe, iii. 584; possibly misplaced by six years. <i>See</i> note in Foxe.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the year 1533--*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1424	Richard Belward, of Ersham, d. Norwich, John Goddesel, of Ditching- ham, parchment maker. Hugh Pie, of Ludney, chaplain.	Brought before the Bishop of Nor- wich, sitting judicially, July 5, 1424, articles of Lollardy being exhibited, and a day of purgation appointed.	Appear before the Bishop July 24, and abjure after examination.	- - - -	Foxe, iii. 585, 586.
1425	Thomas Wynchelsey, Thomas Hatton, Thomas Fleming, Three Franciscans of London.	Cited by the Archbishop in Convo- cation, May 9, as having preached error and heresy.	The Archbishop reports the doctrines ascribed to them before the prelates. They denied that they had so preached, and excused themselves.	- - - -	Wynchelsey was implicated in the reception of Russell ( <i>see</i> below) after his return from Rome in 1426, but was allowed to excuse himself. Wilkins, Conc., iii., 460, 461.
1425	William Russell, a Franciscan and ex-guardian of Grey- friars, in London.	Brought up by the Archbishop in Convocation, May 15, as noted and publicly denounced for false teaching on the question of per- sonal tithe.  After the inquiry (which is not on appeal, but "ex officio mero") had begun, Russell escaped from prison, Jan. 11, 1426, and the Pope again committed the inquiry "de novo" to the same Cardinal, who, on the 7th of June, condemned his proposition, and declared him vehemently suspect, condemning him to imprisonment in the Bishop of London's prison. This is notified by the Pope to the Archbishop, June 13, 1426, and published by Lyndwood in London on Feb. 18, 1427. On the 21st of March 1427 (or 8) Russell recanted his error, but was imprisoned during the pleasure of the Apostolic See.	Submits himself to the Archbishop, who fixes May 18 for the determination of his penance. On that day Russell appears and reads his recantation ; but on May 23 he is reported to the Convocation as not having performed the penance and as not forthcoming, whereon the Archbishop pro- nounces him contumacious. After further cita- tions and proceedings before Bishops acting as commissioners for the Archbishop, the Convo- cation still sitting, Russell is, on the 2nd of June, declared excommunicate, and cited to appear on the 20th day on pain of being declared a heretic. On the 6th of July two clerks, promoters of the office of the Archbishop against him, appear in Convocation, present articles, and offer proofs. The Archbishop commits the examination to Lynd- wood, his official, who reports on the 11th ; and on the 13th the Archbishop pronounces Russell a heretic, and to be punished as such. In the mean- time, Russell, having escaped capture, went to Rome, and there offered to defend his thesis. The Pope ordered him to be arrested, and committed the examination of his opinions to Branda, Car- dinal priest of the title of S. Clement, August 12.	The sentence of June 2 is passed by the Archbishop. That of July 13 is passed "de " consilio consensu et assensu " dictorum confratrum et coepis- " coporum nostrorum ac appro- " bante concilio prædicto."	Opinions from the two universities as to the point in dispute are brought up with the evidence. Wilkins, Conc., iii. 446, 447. The Convocation, in June 1425, ap- pointed a proctor "pro parte cleri" against Russell in the Court of Rome ( <i>ibid.</i> 436), grant- ing a farthing in the pound for expenses ( <i>ibid.</i> 462, 493). The question of the reception of Russell by the Franciscans after his return from Rome in 1426 was brought before Convocation in that year ( <i>ibid.</i> iii. 460, 461).



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the year 1533—*cont.*

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Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particular
1425	Robert Hoke, rector of Braybrook, in the diocese of Lincoln.	Brought up before the Archbishop and prelates in Convocation, as vehemently suspected of and imprisoned for heresy, June 6.	The Archbishop produces articles alleging that Hoke had, in 1405, been allowed to abjure before the Bishop of Lincoln, and had likewise abjured before the Convocation of 1414. He is now again allowed to abjure, and recants at Paul's Cross, July 13.	- - - -	Wilkins, Conc., iii. 434-437.
	Thomas Drayton, rector of the parish church of Snaves, in the diocese of Canterbury.	Brought up before the Archbishop and prelates in Convocation, June 8, as vehemently suspected of heresy.	The Archbishop produces articles alleging that Drayton had abjured before the Bishop of Lincoln in 1415, but had since favoured the Lollards. He is allowed to abjure, June 27.	- - - -	Wilkins, Conc., iii. 434-437.
1426	Thomas Richmond, a Franciscan, of the city of York.	The referendary elected by the prelates and clergy of the province of York in Convocation presents articles of heresy against Richmond, in the name of the prelates and clergy, before the Archbishop's commissaries in Convocation, August 13.	He submits, and the commissaries, the Bishops of Durham and Carlisle and the Abbot of S. Mary's, accept his submission, and order him to appear in person before the Archbishop to do and receive what shall be just. He appears before the Archbishop on the 9th of September, and abjures.	- - - -	Wilkins, iii. 487.
1428	William White and 15 other Kentish Lollards.	Commission of the Archbishop for their arrest.	Not appearing, they are declared contumacious by the Archbishop, and excommunicated, July 31.	- - - -	Reg. Chichele; Foxe, iii. 540.
1428	William White, priest, Thomas Setling, chaplain, William Northampton, of the county of Norfolk, and others.	Commission by Royal letters patent for their arrest as suspected, July 6, 1428.	White is brought before the Bishop in the palace chapel at Norwich, Sept 11, 1428; a large number of clergy and jurists assisting. Articles are objected by the Bishop ex officio. He is convicted as relapsed, and burned. Fasc. Ziz., p. 432; Foxe, iii. 591.	- - - -	Foxe (iii. 587) gives the names of other persons arrested under this Commission who, after imprisonment, abjured; and some were burned, viz., father Abraham, of Colchester, William White, priest, and John Waddon, priest. He also gives a list of over a hundred who abjured, p. 588.
1428	John Jourdelay, of the diocese of Lincoln.	Brought before the Convocation of Canterbury July 15, by the ministers of the Bishop of Lincoln, as vehemently suspect.	Abjures - - - -	- - - -	Foxe, iii. 537; Wilkins, iii. 493.
	Katherine Dertford, spinster, of the diocese of Winchester.	Brought up the same day as "valde suspecta."	She is committed to the Abbot of Chertsey, vicar-general in spirituals of the Bishop of Winchester, to be further examined.	- - - -	Foxe, iii. 537; Wilkins, iii. 493.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1428	Robert, rector of Hedgeley, in the diocese of Lincoln.	Brought up before the Convocation, by the warden of the Tower (July 16), as "valde suspectus."	He is committed to the custody of the Bishop of Lincoln for further examination. On the 19th he abjures.	- - - -	Foxe, iii. 538 ; Wilkins, iii. 493.
	William Harvey, of Tenterden	Brought up before the Convocation, July 21, as suspect.	Expresses himself willing to abjure, but being unable to find security is remitted to the Archbishop's prison.	- - - -	Foxe, iii. 538 ; Wilkins, iii. 494.
	John Calle, a chaplain, of London.	Brought up before the Convocation, July 21, as "de hæresi et errore notatus."	Is committed to the bishop of London for further examination.	- - - -	Foxe, iii. 538 ; Wilkins, iii. 494.
1428	William Emayn, of Bristol	A notorious heretic who had been imprisoned for two years for heresy, and summoned five times before the Bishop of Lincoln.	Brought before the Bishop of Bath and Wells, in the chapterhouse at Wells, Mar. 10, 1428, in the presence of the Dean of Wells, the Abbot of Glastonbury, and many others. After 14 days he is brought up again, and abjures.	- - - -	From the register of Bishop Stafford, at Wells.
1428	Ralph Mungyn, a priest	Brought up before the Archbishop and prelates in Convocation, Nov. 26, by the vicar-general of the Bishop of London, as having been imprisoned as a heretic for four months in the Bishop's prison.	On Nov. 26 he declines to abjure. Having on Dec. 2 repeated his refusal, the Archbishop exhibits articles against him. On Dec. 3 Lyndwood examines him, and he still refuses to abjure, and on Dec. 4 persists, declaring that he is not rightly suspected. The proofs are then brought forward, and the Archbishop pronounces him a heretic, to be punished with perpetual imprisonment.	The sentence is pronounced by the Archbishop presiding in the provincial council "assidentibus—que nobis venerabilibus con—fratribus et coepiscopis nostris, ac præsentibus ceteris. prælatis et clero nostræ Cantuariensis provinciæ, ad idem concilium convocatis."	Wilk., Conc., iii. 497–503. Foxe, iii. 538.
	Richard Monk, a priest, vicar of Chesham.	Brought up Dec. 2 before the Archbishop and prelates in Convocation.	Monk expresses himself as willing to abjure. On Dec. 4 he abjures, and on Dec. 6 reads his recantation at Paul's Cross.	- - - -	Foxe, iii. 538 ; Wilk., iii. 503.
	Thomas Garenter, a chaplain	Brought up Dec. 3, having been arrested by the vicar-general of the Bishop of London.	Garenter submits, and swears to do penance. Read his recantation at Paul's Cross, Dec. 6.	- - - -	Foxe, iii. 539 ; Wilk., iii. 502.
1428	Thomas Pie and John Mendham, of Norwich.	Proceeding by the Bishop, ex officio.	Abjuration ; penance ordered Oct. 8, 1428	- - - -	Other proceedings in the diocese of Norwich, and in the jurisdiction of S. Edmund's, carried on by a body of sworn inquirers, six priests and six laymen, under the bishop's writ of Sept. 3, 1428 ; are in the Norwich Registers. See also Foxe, iii. 593.
	John Beverley	Arrested by the vicar of South Creke, and imprisoned by the Bishop's commissary.	Abjuration and penance.	- - - -	



Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1429	John Skille, of Flixton	Brought before the Bishop of Norwich, March 14.	Abjuration and penance	- - - -	Foxe, iii. 594; Foxe mentions 16 or 17 like cases in this year.
1430	Thomas Bagley, vicar of Manuden, in Essex.	Arrested as suspect by the Bishop of London, and brought before the Upper House on March 2.	He is obstinate, and the Archbishop directs the Bishop of London to proceed against him "secundum canonicas sanctiones." On the 7th of March he refuses to abjure, and is ordered to appear on the 9th to receive sentence from the Bishop of London, his ordinary. On that day he is degraded and left to the secular court.	The degradation is pronounced by the Bishop of London at S. Paul's, the Bishops of Rochester and Llandaff assisting.	Wilkins, Conc., iii. 515-517. He was burnt; Foxe, iii. 600; Gregory, Chron., p. 171.
1430	Robert Grigges, of Martham	Arrested Feb. 17, and brought before the Bishop of Norwich.	Abjures	- - - -	Foxe, iii. 598.
	John Finch, of Colchester	Arrested Sept. 20, and brought before the Bishop of Norwich.	Abjures	- - - -	Foxe, iii. 598.
1430	John Burrell, of Norwich diocese.	Arrested for heresy Dec. 9, and examined by the Bishop's commissary.			
1430	Richard Hoveden	- - - -	- - - -	- - - -	Burnt; see Gregory, Chr., p. 171.
1431	Nicolas Canon, of Eye	Brought before the Bishop of Norwich as suspect.	Abjures	- - - -	Foxe, iii. 599.
1433	"Quidam hæresiarcha"	Appears in Convocation Nov. 27, and maintains certain erroneous conclusions.	The Archbishop orders him to be committed to custody until he can hold communication with his brethren as to the course to be taken.	- - - -	Wilkins, Conc., iii. 522.
1438	John Gardyner	Taken by the parson of S. Mary Axe on Easter-day, and burned May 14.	- - - -	- - - -	Gregory, Chron., p. 181.
1438-41	John Boreham, parish priest of Selhurst, d. Chichester.	Cited by the Bishop on common rumour to appear first in the parish church; asks leave to purge himself by oath; a day fixed a week later at Eastbourne for purgation. Boreham does not appear, and is declared contumacious. Arrested in London, and brought before the Bishop, Oct. 27, at Amberley.	At Amberley ordered to be imprisoned, and brought up Nov. 4 at Chichester for final hearing before the Bishop and his assessors, the Archdeacon of Lewes and Walter Eston, licentiate-in-law. Confession and abjuration.	- - - -	Stephens, Memorials of Chichester, pp. 140-142.



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Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1440	Richard Wyche, priest of the diocese of London.	- - - - -	- - - - -	- - - - -	Burnt June 17, 1440. Fabyan, p. 613; probably the person who abjured in 1419, <i>see</i> under that year. Cf. Gregory, Chron., p. 183.
1441	John Jurdan, of Bristol	- - - - -	Brought before the proctor of the Bishop of Bath and Wells in the chapterhouse, and abjures.	- - - - -	Bp. Stafford's register, at Wells.
	John, rector of Chiddingfold. Robert and William Pratt, of the parish of Ockley, d. Winton. Peter Purvache and Juliana his wife, of Chiddingfold.	Citation issued by the Dean of Guildford under mandate from the Bishop of Chichester, acting as commissary of the Cardinal Bishop of Winchester, to appear at Aldingbourne before the Bishop.	The rector does not appear, and is declared contumacious, and specially reserved for the judgment of the Bishop of Winchester. Richard Killington, chaplain, appears against the Pratts as promoter on behalf of the Bishop of Winchester; they confess, abjure, and do penance.	- - - - -	Stephens, Memorials of Chichester, pp. 142, 143.
1449	John Yonge, chaplain, late of Bristol.	Arrested by order of the Bishop, and committed to the charge of the Abbot of Muchelney, brought before the Bishop at Chew, Oct. 18.	Is examined and abjures - - - - -	- - - - -	From the register of Bishop Beckington, at Wells, fo. 94.
1454	Thomas Northorne, alias Norden, formerly chaplain to the Bishop of Bath and Wells.	Arrested under strong suspicion of heresy.	Brought before the Bishop, sitting judicially in the chapel of the palace at Wells, Nov. 5; certain questions had been put to him whilst in prison seven days before. He now answers and abjures.	- - - - -	From the register of Bishop Beckington, at Wells.
1457	Walter Combes, a layman, of the Hospital of S. Katharine, Bristol.	Appears under strong suspicion before the Bishop of Bath and Wells and his chancellor, and others, in the chapterhouse at Wells, having been before brought before the Bishop at Banwell.	Abjures, April 29, 1457 - - - - -	- - - - -	From the register of Bishop Beckington, at Wells, fo. 212.
1457	Robert Sparke, of Reche, in the parish of Swaffham. John Crud, alias Crowd, of Cambridge. John Baile, of Chesterton.	Charged before the Bishop of Ely at Downham, May 30.	Tried by the Bishop, with Robert Thwaites, D.D., William Witham, and Roger Radcliffe his official, doctors of laws, John Leeks, licentiate in degrees, and Robert Bredon, notary public. In each case the Bishop objects articles, and examines ex officio. The accused, failing to defend the dogmas, are refuted and confess. The Bishop pronounces them suspect, and excommunicates in writing. They then submit and abjure, the penance being performed June 4.	By the Bishop - - - - -	From the Ely registers, MS. Addl 5826.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533—*cont.*

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Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1457	Thomas Hulle, of Hertford -	- - -	Abjures before the Bishop of Lincoln - -	- - -	Reg. Chedworth, at Lincoln.
1457	Reginald Pecock, Bishop of Chichester.	Examination of his writings proposed in consequence of the refusal of the Lords to sit in council with him; the books to be examined by 24 doctors, to report to the Archbishop and assessors.	Before the Archbishop of Canterbury and assessors at Lambeth, Nov. 11 and following days to Dec. 3; the assessors being the Bishops of Winchester, Lincoln, and Rochester. The choice being between abjuration and burning, Pecock on the 21 Nov. retracts, and abjures Dec. 3 at Lambeth and Dec. 4 at S. Paul's Cross. He was kept in custody for life.	- - -	The Pope subsequently interfered in Pecock's favour, and sent bulls of restitution, which were set aside on the ground that they were against the laws of the realm, the Statute of Provisors, and the Royal prerogative. See Babington's preface to Pecock's Repressor, pp. liv.-lv., and Lewis's Life of Pecock.
1459	Thomas Cold, alias Baker, and Agnes his wife, of Philip's Norton.	Accusation - - -	Before the Chancellor of Wells in the Lady Chapel of the Cathedral, Jan. 18; both abjure.	- - -	Register of Bishop Beckington, at Wells, fo. 299.
1460	John Bredhill, rector of S. Nicolas, Calais.	Brought before the upper house of Convocation, May 19, by the Archbishop.	The Archbishop exhibits articles of heresy against him; he answers, but not fully, and he is ordered to attend from day to day. After this, order is given for his apprehension.	- - -	Wilkins, Conc., iii. 578.
1463	Simon Harrison, an acolyte -	Arrested in Lambeth Church whilst saying mass, and brought before the Convocation July 16 on charge of idolatry.	The Archbishop commits him to the Bishop of Winchester for punishment.	- - -	Wilkins, Conc., iii. 585.
1466	William Balowe - -	- - -	- - -	- - -	He was burnt. Gregory, Chr., p. 233.
1527	Thomas Bilney. Thomas Arthur.	Arrested by order of Cardinal Wolsey, and brought before him on the 27th of November 1527 in the chapterhouse at Westminster.	Before Cardinal Wolsey, the Legate, the Archbishop of Canterbury, the Bishops of London, Rochester, Ely, Exeter, Lincoln, Bath, S. Asaph, and Carlisle, and several other lawyers and divines. On the 27th of November the accused were examined, and witnesses were heard against both on the 28th of November and on the 2nd and 3rd of December. On the 2nd Arthur submitted, and after further interrogatories and examinations on the 4th, 5th, and 7th Bilney also recanted, and had penance enjoined.	- - -	Bilney's business was before Convocation on the 3rd of March 1531; see Wilkins, Conc., iii. 725. Bilney was afterwards, the same year, condemned as a relapsed heretic by the Chancellor of Norwich, and burned at Norwich Aug. 19 or 26; having been degraded by the suffragan. See Foxe, iv. 623-656.



A CALENDAR of authenticated TRIALS for HERESY in ENGLAND prior to the Year 1533—*cont.*

Date.	Name.	Process by which the Suit was initiated.	Tribunal before which it was tried.	Form of Sentence.	Other Particulars.
1531	Edward Croome, S.T.P., rector of S. Antonin in London.	Noted and suspected as a preacher of heresy, and therefore convented before the Bishop of London and other Bishops at York House, Westminster.	On the 11th of March 1531 recognised his errors in 14 articles and submitted.	- - - -	The business of Crome was before the Convocation with that of Bilney and Latimer on the 3rd of March 1531 ( <i>see</i> Wilkins, iii. 725), and also on the 14th ( <i>ibid.</i> 726). The articles are given in Stokesley's Register, with the date March 11.
1531	Hugh Latimer - -	Articles propounded in Convocation March 3; and repeated March 18, 1531. Is cited to appear before the Archbishop and the Bishop of London Jan. 29, 1532. Appears in Convocation, March 11.  prayed for absolution. (The articles and submission are given in Stokesley's Register.) The Bishop of London, who was acting as president, deferred the day of signing to April 10, on which day Latimer was to appear to hear the will of the Archbishop and of the judges to be deputed by the authority of Convocation, namely, the Archbishop of York, the Bishops of Winchester, Rochester, and Exeter, Drs. Wolman, Sampson, Fox, &c. On the 10th he appeared, subscribed the articles insisted on, and was ordered to appear on the 15th of April to hear further process. On the 15th of April he appeared, and being called on to answer for a letter written to Mr. Grenewood at Cambridge, was admonished to appear again on the 19th to hear the will of the Archbishop. On May 9th, being required to swear that he would make answer on the 22nd, he replied that he had appealed to the King, and would stand by the appeal. On the 22nd the Bishop of London, as the Archbishop's commissary, treated of the matter, and the Bishop of Winchester signified the King's pleasure on the matter of the appeal, remitting Latimer to the Archbishop and Convocation. Thereupon Latimer confessed his error on his knees, and having made submission, was, at the King's special request, received into favour on the understanding that, if he should relapse, the premises should be objected to him. The Bishops there protested that his submission did not extend to a renunciation of his errors such as was usual in like cases. However, he gave his promise to obey the law and observe the commands of the Church, and was absolved. On the 26th of March 1533, it being stated in Convocation that Latimer had, notwithstanding his promise, preached the errors which he had formerly held, a letter was drawn up for circulation in the districts in which he was likely to preach, recording his submission and subscription.	March 11, 1532. Latimer is required to sign certain articles; he refuses three times, whereupon the Archbishop declared him contumacious, and with the consent of the Bishops excommunicated him, and directed that he should remain in safe custody at Lambeth. March 21. It was determined that if he would sign the 11th and 14th articles proposed to him he should be absolved. He submitted, and	- - - -	Wilkins, Conc., iii. 725, 747, 748, 756.



## HISTORICAL APPENDIX (III.).

## A Copy of the several formal Acts by which the Clergy recognised the Royal Supremacy, furnished by Canon Stubbs, D.D.

I. *The Grant of money made by the Clergy in 1531 in which the King's Supremacy is recognized.*

Excellentissimo et illustrissimo principi et domino nostro domino Henrico Octavo Dei gratia Angliæ et Franciæ regi, fidei defensori, et domino Hiberniæ invictissimo et potentissimo, Willelmus permissione divina Cantuariensis archiepiscopus, totius Angliæ primas et apostolicæ sedis legatus, salutem in Eo per quem reges regnant et principes dominantur. Vestræ regiæ celsitudini per præsens publicum instrumentum sive has literas testimoniales sigillo nostro sigillatas, ac signo, nomine, et subscriptione manus, notarii publici subscripti, scribæ nostri in hac parte assumpti, subscriptas et consignatas, tenore præsentium significamus et notum facimus: quod nos Willelmus archiepiscopus prædictus et suffraganei nostri ceterique prælati et clerus nostræ Cantuariensis provinciæ, in sacra synodo provinciali sive prælatorum et cleri ejusdem provinciæ Cantuariensis convocatione, in ecclesia cathedrali divi Pauli Londoniis, quinto die mensis Novembris anno Domini MDXXXIX, indictione tertia, pontificatus sanctissimi in Christo patris et domini, domini Clementis, divina providentia hujus nominis papæ septimi, anno septimo, inchoata et celebrata, ac de tempore in tempus continuata, et nuper ex causis urgentibus ad domum capitularem infra monasterium Sancti Petri Westmonasteriensis situatam prorogata, et ibidem de diebus in dies continuata, congregati, super quibusdam arduis et urgentibus negotiis ecclesiam Anglicanam tangentibus sæpius, pluries et iteratis vicibus, tractavimus et communicavimus; tandem post longum tractatum inter nos et confratres nostros prælatosque, decanos, archidiaconos, et cleri nostræ Cantuariensis provinciæ procuratores in ea parte habitum, die Martis, videlicet vicesimo quarto die mensis Januarii, anno Domini secundum cursum et computationem ecclesiæ Anglicanæ MDXXX, indictione quarta, pontificatus dicti sanctissimi in Christo patris anno octavo, in domo capitulari Westmonasteriensi prædicta iterum congregati, nos Willelmus archiepiscopus antedictus, nostrique suffraganei ceterique prælati et clerus antedicti vestræ regiæ majestati concessimus summam centum millium librarum sumptibus et expensis omnium nostrorum prædictorum colligendam, levandam, et ad usum vestræ regiæ majestatis persolvendam, locis et terminis in ea parte assignatis et limitatis, prout in quodam scripto certificatorio vestræ celsitudini per nos facto, et sub sigillo nostro archiepiscopali, prædicto plenius continetur, cujus concessionis forma sequitur in hæc verba:—

Si naturaliter obligamur iis maxime benefacere qui de nobis præ ceteris bene meriti sunt, ut certe obligamur, profecto nisi humanitatis officia et naturæ jura fœde violare voluerimus, non possumus omittere vel præterire, quin illustrissimo et potentissimo domino nostro Henrico Octavo, Angliæ et Franciæ regi invictissimo, fidei defensori, et domino Hiberniæ, pro suis ingentibus et incomparabilibus beneficiis aliquam nostri animi gratam significationem, non tantum per verbalem gratiarum et laudum actionem, sed etiam per realis et pecuniariæ benevolentie spontaneam oblationem ostendamus. Tanta enim sunt illustrissimæ ejus majestatis in nos merita, quod nullis laudibus æquari, nullis gratiis referri, nullis officiis rependi, nedum nostris præmiis aut muneribus recompensari queant. Etenim sicut superioribus diebus universalem ecclesiam cujus humillima membra sumus studiosissimo calamo et sumptuosissimo bello contra hostes defendit, tam potenter et invicte quod nominis et famæ æternam gloriam inde promeruit, atque ad cælos viam aperuit, et ingressum sibi patefecit; atque præterea totam Christi ecclesiam generaliter, et nos suos subditos magis peculiariter tali merito sibi perpetuo et obligatissime devinxit; sic impræsens quamplurimos hostes, maxime Lutheranos, in perniciem ecclesiæ et cleri Anglicani, cujus singularem protectorem, unicum et supremum dominum, et, quantum per Christi legem licet, etiam supremum caput ipsius majestatem recognoscimus, conspirantes, ac in prælatorum et cleri famam et personas sparsis famosis libellis, mendaciis et maledictis, jampridem hoc animo debacchantes, ut illorum æstimationem læderent et vulgo contemnendos propinarent; sapientissima ejus majestas, ut decebat pium fidei et ecclesiæ

defensorem, suis laboribus, studio, rationibus et consiliis, imo suis monitis, edictis et auctoritate taliter contudit et repressit, quod illorum audacia cœpit refrigescere, quæ maximum tumultum contra ecclesiam videbatur excitata: qui tametsi in sola ecclesiæ potestate subvertenda præludabant, tamen forsitan intendebant non solum prælatorum sed etiam omnium principum potestatem enervare, et evangelii imitationem simulantes atque sanctam quandam hypocrisim suis inceptis prætendentes, eo respiciebant ut tandem confœderata nequissima multitudo insurgerent, et bona clericis data diriperent, et in ecclesiarum possessiones violenter irrumperent; quem metum atque periculum rex noster invictissimus a nobis depulit, et curavit ut in quiete securaque pace Deo ministrare et curæ animarum populi ejus majestati commissi debite inservire possimus. Quocirca ne illustrissima ejus majestas suam benevolentiam et excellentissima beneficia præfata in omnino ingratos se contulisse judicet, et quia summe confidimus quod ejus celsitudo ex sua in Deum ingenti pietate, proque clarissimo fidei defensoris nomine quod præ ceteris regibus longe honoratissimum jam olim promeruit, Christi fidem et ecclesiam solito zelo contra hæreticos et alios oppugnatores potenter defendet; et ut omnibus et singulis prælatis, clericis et religiosis in sacris ordinibus constitutis, omnibus abbatissis, priorissis, etiam sanctimonialibus Cantuariensis provinciæ, atque quibusvis judicibus, advocatis, registrariis et scribis, procuratoribus ad judicia constitutis ac apparitoribus ceterisque qui infra Cantuariensem provinciam potestatem aut jurisdictionem, ut judices eorumve deputati, in aliquibus curiis spiritualibus exercuerunt, aut ejusdem jurisdictionis exercitio vel executioni sicut advocati, registrarii, scribæ, procuratores ad judicia et apparitores, ministri fuere, generalem gratiam et pardonationem de omnibus eorum transgressionibus poenali legum et statutorum hujus regni, tum ceterorum tum etiam statutorum de Provisoribus et Præmunire, in tam amplis modo et forma prout suæ majestati ex solita sua benignitate in subditos suos sæpius ostendere placuit, concedere dignetur, nobis ea condonans quæ nobis humilibus suis subditis prodesse, et ab angustiis quibus versamur liberare poterunt. Quod ut faciat humillime provoluti in genua ante pedes ejusdem celsitudinis supplices deprecamur nos prælati et clerus dictæ Cantuariensis provinciæ, in convocatione sive sacra synodo provinciali in ecclesia cathedrali divi Pauli Londoniis, quinto die mensis Novembris anno Domini MDXXXIX, per reverendissimum in Christo patrem et dominum Willelmum permissione divina Cantuariensem archiepiscopum, totius Angliæ primatem et apostolicæ sedis legatum, ac per prælatos et clerum Cantuariensis provinciæ prædictæ inchoata, et de tempore in tempus continuata, et nuper ex causis urgentibus ad domum capitularem infra monasterium Sancti Petri Westmonasteriensis situatam prorogata, illustrissimo et potentissimo principi domino nostro Henrico octavo Dei gratia Angliæ et Franciæ regi, fidei defensori, et domino Hiberniæ, dedimus et concessimus, prout per præses damus et concedimus, summam centum millium librarum de bonis et possessionibus ecclesiasticis et ecclesiasticorum dictæ Cantuariensis provinciæ pro tempore existentium, sumptibus prædictorum prælatorum et cleri, absque deductione aliqua, seu ut vocant allocatione, a regia majestate ratione archiepiscopatus aut cujuscunque episcopatus provinciæ antedictæ interim vacantis aut forsitan vacaturi, quovis modo petenda, seu contributione aliqua ad solutionem ipsius summæ vel alicujus partis ejusdem a laicis quovismodo exigenda, præterquam ab iis laicis ad quorum manus bona illorum prælatorum vel clericorum pervenient, qui tempore mortis suæ ad solutionem alicujus partis dictæ summæ tenebuntur, quam summæ partem etiam laici pro rata bonorum quæ ad manus eorum pervenient solvere tenebuntur, modo et forma in hac eadem synodo assignatis et assignandis, levandam et colligendam, necnon ad usum majestatis ejusdem intra quinquennium ex nunc proximo et immediate sequens per quinque æquales portiones fideliter persolvendam; ita videlicet quod prima portio dictarum quinque, videlicet viginti millium librarum, in festo sancti Michaelis archangeli proximo futuro ejus majestati debita censeatur, et in festo Annunciationis beate Mariæ extunc



proximo sequente per receptores fideliter persolvatur; secunda vero portio dictarum quinque in festo sancti Michaelis archangeli anno Domini millesimo quingentesimo tricesimo secundo ejus majestati debita censeatur, et in festo Annunciationis beatæ Mariæ extunc proximo sequente ad usum ejusdem fideliter persolvatur; tertia vero portio dictarum quinque in festo sancti Michaelis archangeli anno Domini millesimo quingentesimo tricesimo tertio ejus majestati debita censeatur, et in festo Annunciationis beatæ Mariæ extunc proximo sequente ad usum ejusdem fideliter persolvatur. Quarta vero portio dictarum quinque in festo sancti Michaelis archangeli anno Domini millesimo quingentesimo tricesimo quarto ejus majestati debita censeatur, et in festo Annunciationis beatæ Mariæ extunc proximo sequente ad usum ejusdem fideliter persolvatur. Quinta vero et ultima portio dictarum quinque in festo sancti Michaelis archangeli anno Domini millesimo quingentesimo tricesimo quinto ejus majestati debita censeatur, et in festo Annunciationis beatæ Mariæ extunc proximo sequente ad usum ejusdem fideliter persolvatur; ita videlicet quod receptores generales ad hanc summam centum millium librarum a collectoribus per prælatos singularum diocesum, pro quibus ipsi prælati et clerus domino nostro regi respondere tenebuntur, constituendis, recipiendam auctoritate hujus convocationis deputandi, omnes et singulas pecuniarum summas sic per eos et suos in ea parte deputatos sive assignatos, de et pro hujusmodi summa centum millium librarum sic ad usum domini nostri regis concessa, et qualibet parte ejusdem, receptas, thesaurario cameræ ejusdem domini nostri regis pro tempore existenti, in domo officii sui apud Westmonasterium de tempore in tempus, et non alibi neque alteri, solvere teneantur; atque ad hoc per indenturas inter eundem thesaurarium et receptores prædictos conficiendas, et in receptione cujuscunque summæ sic eidem thesaurario solvendæ, absque omni dilatione seu excusatione quacunque, manu ejusdem thesaurarii subscribendas et dictis receptoribus pro summis sic per eos ei persolutis in plenam exonerationem et acquietantiam pro eisdem sufficientem continue deliberandas; ita videlicet quod vigore dictarum indenturarum tam omnes et singuli episcopi, prælati et clerus dictæ Cantuariensis provinciæ, quam ipsi receptores generales prædicti, pro hujusmodi summis solutis omnimodo sint acquietati et exonerati, sic quod alibi vel per aliquam spiritualem seu temporalem personam non molestentur, turbentur aut inquietentur, sive molestari possint aut valeant quovismodo in futurum. Et quoniam placuerit benignitati regis nostri serenissimi, propter quamplures casus fortuitos qui interim evenire possent, nobis concedere suam majestatem æquo animo laturam si de summa illa viginti millium librarum singulo quoque anno, durante hoc quinquennio, ut præfertur, persolvenda nonnihil in termino solutioni præfinito defuerit aut desideretur, modo summam duorum millium marcarum in uno anno vel decem millium marcarum in toto hoc quinquennio non excedat; nos prælati et clerus antedicti summam illam seu summas ita desideratas, seu terminis ut præmittitur debitis minime persolutas, in sexto abhinc anno, videlicet in festo Annunciationis beatæ Mariæ Virginis quod erit inchoante anno Domini millesimo quingentesimo tricesimo septimo, thesaurariocameræ ejus majestatis loco, modo et forma præscriptis, integre fideliter et plenarie persolvemus. In quorum omnium et singulorum præmissorum fidem et testimonium nos Willelmus archiepiscopus primas et legatus antedictus, præsentem literas testimoniales, sive hoc præsens publicum instrumentum, sigilli nostri appensione, signoque et subscriptione Willelmi Potkyn publici auctoritate apostolica notarii et scribæ nostri in hac parte assumpti, fecimus et jussimus communiri. Datum quoad sigillationem præsentium vicesimo secundo die mensis Martii, anno Domini secundum cursum et computationem ecclesiæ Anglicanæ millesimo quingentesimo tricesimo, et nostræ translationis anno vicesimo octavo. Et ego Willelmus Potkyn clericus Cantuariensis diocesis, publicus auctoritate apostolica notarius, dictique reverendissimi in Christo patris et domini, domini Willelmi permissione Divina Cantuariensis archiepiscopi, totius Angliæ primatis et apostolicæ sedis legati registrarius, in actorum scribam specialiter in hac parte assumptus deputatus, quia præfatæ concessionem summæ centum millium librarum in dicta sacra synodo provinciali sive prælatorum et cleri Cantuariensis provinciæ convocatione, prædicto illustrissimo et potentissimo domino nostro Henrico octavo, Angliæ et Franciæ regi, fidei defensori et domino Hiberniæ invictissimo, sumptibus et expensis omnium dictorum prælatorum et cleri Cantuariensis provinciæ colligendæ et levandæ et ad usum ejusdem illustrissimi et potentissimi domini nostri regis fideliter persolvendæ, locis et terminis in ea parte assignatis et limitatis, ceterisque præmissis omnibus et singulis, dum sic ut præmittitur sub anno Domini, indictione et pontificatu, ac mensibus, diebus et loco superius expressis, agerentur et fierent, una cum præ-

scripto reverendissimo in Christo patre, reverendisque episcopis suffraganeis suis, necnon prælatis et clero dictæ provinciæ Cantuariensis, præsens personaliter interfui, eaque omnia et singula sic fieri vidi et audivi; ideo has literas testimoniales sive hoc præsens publicum instrumentum exinde confectum, et in hanc publicam formam redactum subscripsi, ac signo et nomine meis solitis et consuetis una cum appensione sigilli præfati reverendissimi patris, signavi rogatus et requisitus in fidem et testimonium præmissorum. Et constat mihi notario publico prædicto de interlineatione horum verborum "ut judices" in vicesima linea a principio hujus instrumenti numeranda.

[The corresponding grant of the Convocation of the Province of York, of the sum of 18,840*l.* 0*s.* 10*d.* was made in the same form, mutatis mutandis, on Thursday, May 4, 1531. Wilkins, Conc. iii., 744.]

## II. *The Submission of the Clergy; made in 1532.*

In Dei nomine, Amen. Per præsentis publici instrumenti seriem cunctis appareat evidenter et sit notum, quod anno Domini 1532<sup>o</sup>, indictione quinta, pontificatus sanctissimi in Christo patris et domini nostri, domini Clementis divina providentia illius nominis papæ septimi anno nono, mensis vero Maii die 16<sup>mo</sup>, in quodam ambulatorio infra ædes excellentissimi et invictissimi principis et domini nostri, domini Henrici octavi, Angliæ et Franciæ regis, fidei defensoris et domini Hiberniæ illustrissimi, prope Westmonasterium situatas, constitutus personaliter reverendissimus in Christo pater et dominus, dominus Willelmus permissione divina Cantuariensis archiepiscopus, totius Angliæ primas et apostolicæ sedis legatus, quandam schedulam per ipsum et alios episcopos, abbates et priores domus superioris convocationis prælatorum et cleri provinciæ Cantuariensis in domo capitulari infra monasterium Westmonasterii hesternam die videlicet 15<sup>ma</sup> die hujus mensis Maii tentæ, inactitatum, concordatam et conclusam, eidem excellentissimo et invictissimo domino regi præsentavit, tradidit et liberavit. Quam quidem schedulam illustris dominus Thomas dux Norfolkæ, thesaurarius Angliæ, tunc et ibidem coram dicto excellentissimo domino nostro rege reverendissimoque patre archiepiscopo prædicto, necnon reverendis patribus dominis Johanne Lincolnensi, Johanne Bathoniensi et Wellensi, et Henrico Assaphensi episcopis, religiosisque viris monasteriorum Sancti Albani, de Bury, de High Waltham ac Merton abbatibus et priori, in nostrorum notariorum publicorum subscriptorum et testium inferius nominatorum præsentis, de mandato ejusdem excellentissimi et invictissimi domini nostri regis publice perlegebat; cujus quidem schedulæ verus tenor sequitur verborum sequentium sub tenore:—

We your most humble subjects daily orators and beadsmen (bedemen) of your clergy of England (e) having our speciall trust and confidence in your most excellent wisdom, your princely goodnesse, and fervent zeal to the promotion of God's honour and Christian religion; and also in your learning, far exceeding in our judgment, the learning of all other kings and princes that we have reed (read) of, and doughting (doubting) nothing but that the same shall still continew (ue) and dailey increase (daily encrease) in your Majesty, first do offer and promise in verbo sacerdotii here unto your highness submitting ourselves most humbly to the same, that we will never from henceforth (presume to attempt, alege, clayme, or yet put in ure, or to) enact [put in ure,] promulge or execute any [newe] canons [or] constitutions (or ordynauce) provinciall, (or by any other name whatsoever they may be called) or any other newe ordinance provinciall or synodall, in our convocation[s or synode] in time comyng, which convocation is, alway hath byn, and must be assembled onely by your high commandment of writte; (unless) only your highness by your royall assent shall lycence us to [assemble our convocation, and to] make, promulge, and execute (the same) [such constitutions and ordinaments as shall be made in the same] and thereto give your (most) royall assent and authorite. Second[ari]ly that whereas diverse [of the] constitutions, [ordinaments] and canons provinciall [or synodall] which have (hath) been heretofore enacted, be thought to be not only muche prejudiciall to your prerogative royall, but also over muche onerous to your highnesses subjects, [your clergie aforesaid is contented, if it may stand so with your highnesses pleasure, that] it be committed to the examination and judgment of [your grace and of] thirty-two persons, whereof sixteen to be of the upper and nether house of the temporalte and other sixteen of the clergy all to be chosen and appointed by your (highness) most noble grace, so that fynally whichsoever of the said constitutions, [ordinaments or canons provinciall or synodall,] shall be thought and determyned [by your



grace and] by the most part of the said xxxii persons (worthy to be abrogated and adnulled) [not to stand with Gods laws and the laws of your realme,] the same to be (afterwards) abrogated and taken away by your (most noble) grace and the clergie (and to be abolite as of no force and strength. Thirdly that all other of the said constitutions and canons being viewed and approbate by the foresaid thirty-two persons which by the most part of their judgments do stand with God's laws and your high, ness's) [and such of them as shall be seen by your grace- and by the most part of the said thirty-two persons to stand with Goddes laws and the lawes of your realme,] to stand in full strength and power, your grace's most royall assent [and authorite] ones (once) impetrate and (fully) given to the same.

Super quibus omnibus et singulis tam dictus invictissimus princeps Henricus rex Angliæ et Franciæ, dominus noster supremus, quam idem reverendissimus pater archiepiscopus Cantuariensis, nos notarios publicos subscriptos unum vel plura publicum seu publica instrumentum sive instrumenta exinde conficere instanter requisiverunt et eorum uterque requisivit. Acta fuerunt hæc omnia et singula prout superscribuntur et recitantur, sub anno Domini, indictione, pontificatu, mense, die et loco prædictis, præsentibus tunc ibidem nobilibus viris dominis Georgio Bergoveny, Johanne Huse, Johanne Mordaunt, baronibus, Willelmo Fitzwilliam milite, et Thoma Cromwell armigero, testibus ad præmissa rogatis et specialiter requisitis.

Hoc instrumentum retro scriptum erat subscriptum manibus trium notariorum, videlicet magistri Willelmi Potkyn, magistri Johannis Hering, et Thomæ Argall.

### III. *The Act of Parliament of 26 Hen. VIII. c. 1. by which the King's supremacy is recognized.*

Albeit the King's Majesty justly and rightfully is and ought to be the supreme head of the Church of England, and so is recognised by the clergy of this realm in their convocations, yet nevertheless for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this realm of England, and to repress and extirp all errors, heresies and other enormities and abuses heretofore used in the same; be it enacted by authority of this present parliament that the king our sovereign lord, his heirs and successors kings of this realm, shall be taken accepted and reputed the only Supreme head in earth of the Church of England called Anglicana Ecclesia, and shall have and enjoy annexed and united to the imperial crown of this realm as well the title and stile thereof as all honours, dignities, preeminences, jurisdictions, privileges, authorities, immunities, profits and commodities to the said dignity of supreme head of the same church belonging and appertaining; and that our said sovereign lord, his heirs and successors kings of this realm shall have full power and authority from time to time to visit, repress, redress, reform, order, correct, restrain and amend all such errors, heresies, abuses, offences, contempts and enormities whatsoever they be, which by any manner spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm, any usage, custom, foreign laws, foreign authority, prescription or any other thing or things to the contrary hereof notwithstanding.

### IV. *Oath taken by the Dean and Chapter of St. Paul's, recognizing the supremacy, &c. A.D. 1534.*

Quum ea sit non solum Christianæ religionis et pietatis ratio sed nostræ etiam obedientiæ regula, ut domino regi nostro Henrico ejus nominis octavo, cui uni et soli post Christum Jesum Servatorem nostrum debemus universa, non modo omnimodam in Christo et eandem sinceram, integram perpetuamque animi devotionem, fidem et observantiam, honorem, cultum et reverentiam præstamus, sed etiam de eadem fide et observantia nostra rationem quotiescunque postulabitur reddamus, et palam omnibus si res poscat libentissime testemur, noverint universi ad quos præsens scriptum pervenerit quod nos decanus et capitulum ecclesiæ cathedralis divi Pauli Londoniensis, diocesis Londoniensis, uno ore et voce atque unanimi omnium consensu et assensu hoc scripto nostro sub sigillo nostro communi in domo nostra capitulari dato, pro nobis et successoribus nostris omnibus et singulis imperpetuum profiteamur, testamur et fideliter promittimus et spondemus, nos dictos decanum et capitulum et successores nostros omnes et singulos integram, inviolatam, sinceram, perpetuamque fidem, observantiam et obedientiam semper præstituros erga dominum regem nostrum Henricum octavum, et erga Annam reginam uxorem ejusdem, (1) et

erga sobolem ejus ex eadem Anna legitime tam progenitam quam prognerandam, et quod hæc eadem populo notificabimus, prædicabimus, et suadebimus, ubicunque dabitur locus et occasio.

Item, quod confirmatum ratumque habemus semperque et pro perpetuo habituri sumus, quod prædictus rex noster Henricus est caput ecclesiæ Anglicanæ.

Item, quod episcopus Romanus qui in suis bullis papæ nomen usurpat, et summi pontificis principatum sibi arrogat, (2) non habet majorem aliquam jurisdictionem collatam sibi a Deo in Sacra Scriptura in hoc regno Angliæ quam quivis alius externus episcopus.

Item, quod nullus nostrum in ulla sacra concione, privatim vel publice habenda, eundem episcopum Romanum appellabit nomine papæ aut summi pontificis, sed nomine episcopi Romani vel ecclesiæ Romanæ; et quod nullus nostrum orabit pro eo tanquam papa, sed tanquam episcopo Romano.

Item (3), quod soli dicto domino regi et successoribus suis adhærebimus, et ejus leges ac decreta manutenebimus, episcopi Romani legibus, decretis et canonibus, quæ contra legem divinam et sacram Scripturam aut contra jura hujus regni esse inveniuntur, in perpetuum renunciantes.

Item quod nullus nostrum omnium in ulla vel privata vel publica concione quicquam ex sacris scripturis desumptum ad alienum sensum detorquere præsumet, sed quisque Christum ejusque verba et facta simpliciter, aperte, sincere, et ad normam seu regulam sacrarum scripturarum, et vere catholicorum atque orthodoxorum doctorum prædicabit catholice et orthodoxe.

Item quod unusquisque nostrum in suis orationibus et comprecationibus de more faciendis, primum omnium regem nostrum tanquam supremum caput ecclesiæ Anglicanæ, Deo et populi precibus commendabit, deinde reginam Annam cum sua sobole, tum demum archiepiscopos Cantuariensem et Eboracensem cum ceteris cleri ordinibus prout videbitur.

Item quod omnes et singuli prædicti decanus et capitulum et successores nostri conscientie et jurisjurandi sacramento nosmet firmiter obligamus, quod omnia et singula prædicta fideliter in perpetuum observabimus. In cujus rei testimonium huic scripto nostro commune sigillum nostrum appendimus, et nostra nomina propria quisque manu subscripsimus. Datum in domo nostra capitulari die xx<sup>o</sup> mensis Junii, anno Domini m<sup>o</sup>dc<sup>o</sup>xxxiv<sup>o</sup> et anno regni regis nostri Henrici octavi xxvi<sup>o</sup>.

(Variations in the form as taken by other churches and communities.)

(1) Et erga castum sanctumque matrimonium nuper non solum inter eosdem juste et legitime contractum, ratum et consummatum, sed etiam tam in duabus convocationibus cleri quam in parlamento dominorum spiritualium et temporalium atque communium in eodem parlamento congregatorum et præsentium determinatum, et per Thomam Cantuariensem archiepiscopum solemniter confirmatum et erga quancunque aliam ejusdem Henrici regis nostri uxorem post mortem prædictæ Annæ nunc uxoris ejus legitime ducendam, et erga sobolem dicti domini regis Henrici ex prædicta Anna legitime tam progenitam quam prognerandam, et erga sobolem dicti domini regis ex alia quacunque legitima uxore post mortem ejusdem Annæ legitime prognerandam, et quod hæc populo notificabimus, prædicabimus et suadebimus ubicunque dabitur locus et occasio.

(2) Nihilo majoris neque auctoritatis aut jurisdictionis habendus sit quam ceteri quivis episcopi in Anglia vel alibi gentium in sua quisque diocesi.

(3) Item quod soli dicto domino regi et successoribus suis adhærebimus, atque ejus decreta ac proclamationes, insuper omnes Angliæ leges, atque etiam statuta omnia in parlamento et per parlamentum decreta, confirmata, stabilita et ratificata, perpetuo manutenebimus, episcopi Romani legibus, decretis et canonibus, si qui contra legem divinam et sacram scripturam esse inveniuntur, imperpetuum renunciantes.

### V.—*Proclamation of the King's Style and Title, A.D. 1535.*

Memorandum quod quinto decimo die Januarii anno regni regis Henrici octavi vicesimo sexto, idem dominus rex apud palatium suum Westmonasterii circa horam undecimam ante meridiem ejusdem diei, præsentialiter existens in camera sua privata ibidem, coram honorabilibus et spectabilibus viris Thoma Audeley milite domino cancellario Angliæ, Thoma duce Norfolkchiæ thesaurario Angliæ, Thoma comite Wiltesie custode privati sigilli dicti domini regis, Thoma Crumwell primario secretario dicti domini regis, et multis aliis;—decrevit et ordinavit stilum et titulum suum regium, tam in chartis et literis suis patentibus quam in brevibus quibuscunque in omnibus et singulis curiis



suis infra regnum suum Angliæ et infra omnia et singula dominia et terras ei subjecta fieri et scribi deinceps sub ea quæ sequitur forma, videlicet; Henricus octavus Dei gratia Angliæ et Franciæ rex, fidei defensor et dominus Hiberniæ, et in terra supremum caput Anglicanæ Ecclesiæ.

VI. *Extract from the Act 1 Eliz., c. 1.; reenacting the Royal claims to supremacy.*

XVII. And that also it may likewise please your Highness that it may be established and enacted by the authority aforesaid that such jurisdictions, privileges, superiorities, and pre-eminences, spiritual and ecclesiastical as by any spiritual or ecclesiastical power or authority hath heretofore been or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever by authority of this present parliament be united and annexed to the imperial crown of this realm.

XVIII. And that your Highness, your heirs and successors, kings, or queens of this realm shall have full power and authority by virtue of this act, by letters patent under the Great Seal of England, to assign, name, and authorise, when and as often as your Highness, your heirs or successors shall think meet and convenient, and for such and so long time as shall please your Highness, your heirs or successors, such person or persons being natural born subjects to your Highness, your heirs or successors, as your Majesty, your heirs or successors, shall think meet, to exercise, use, occupy and execute under your Highness, your heirs, and successors, all manner of jurisdictions, privileges, and preeminences, in anywise touching or concerning any spiritual or ecclesiastical jurisdiction within these your realms of England and Ireland, or any other your Highness's dominions and countries, and to visit, reform, redress, order, correct, and amend all such errors, heresies, schisms, abuses, offences, contempts, and enormities whatsoever, which, by any manner of spiritual or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended, to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this realm, and that such person or persons so to be named, assigned, authorized and appointed by your Highness, your heirs, or successors, after the said letters patents to him or them made and delivered, as is aforesaid, shall have full power and authority by virtue of this Act, and of the said letters patents, under your Highness, your heirs, and successors, to exercise, use and execute all the premises, according to the tenour and effect of the said letters patents, any matter or cause to the contrary in anywise notwithstanding.

XIX. And for the better observation and maintenance of this Act, may it please your Highness that it may be further enacted by the authority aforesaid, that all and every archbishop, bishop, and all and every other ecclesiastical person, and other ecclesiastical officer and minister of what estate, dignity, preeminence or degree soever he or they be or shall be, and all and every temporal judge, justice, mayor, and other lay or temporal officer and minister, and every other person having your Highness's fee or wages within this realm or any your Highness's dominions, shall make, take, and receive a corporal oath upon the Evangelists, before such person or persons as shall please your Highness, your heirs, or successors, under the Great Seal of England to assign and name to accept and to take the same according to the tenour and effect following, that is to say:—

"I, A. B, do utterly testify and declare in my conscience that the Queen's Highness is the only supreme governor of this realm and of all other her Highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes as temporal; and that no foreign prince, person, prelate, state or potentate, hath or ought to have any jurisdiction, power, superiority, preeminence or authority, ecclesiastical or spiritual within this realm; and therefore, I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities and authorities, and do promise that from henceforth I shall bear faith and true

allegiance to the Queen's Highness, her heirs, and lawful successors, and to my power shall assist and defend all jurisdictions, preeminences, privileges, and authorities granted or belonging to the Queen's Highness, her heirs and successors, or united and annexed to the imperial crown of this realm. So help me God, and by the contents of this book."

VII. *Explanation by Queen Elizabeth of the meaning in which the doctrine of the supremacy is to be understood.*

The Queen's Majesty being informed that, in certain places of the realm, sundry of her native subjects being called to ecclesiastical ministry of the Church, be by sinister persuasion and perverse construction induced to find some scruple in the form of an oath which by an act of the last Parliament is prescribed to be required of divers persons, for their recognition of their allegiance to Her Majesty, which certainly never was ever meant nor by any equity of words or good sense can be thereof gathered; would that all her loving subjects should understand that nothing was, is, or shall be meant or intended by the same oath to have any other duty, allegiance, or bond required by the same oath, than was acknowledged to be due to the most noble kings of famous memory, King Henry the Eighth her Majesty's father, or King Edward the Sixth her Majesty's brother.

And further, her Majesty forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons which most sinisterly and maliciously labour to notify to her loving subjects how by the words of the said oath it may be collected that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine service in the church, wherein her said subjects be much abused by such evil disposed persons; for certainly Her Majesty neither doth, nor ever will challenge any authority than that was challenged and lately used by the said noble kings of famous memory, King Henry the Eighth and King Edward the Sixth, which is and was of ancient time due to the imperial crown of this realm; that is under God to have the sovereignty and rule over all manner of persons born within these her realms, dominions, and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them. And if any person, that hath conceived any other sense of the form of the said oath, shall accept the same oath with this interpretation, sense, or meaning, her Majesty is well pleased to accept every such in that behalf as her good and obedient subjects, and shall acquit them of all manner of penalties contained in the said Act against such as shall peremptorily or obstinately refuse to take the same oath.

VIII. *The Thirty-seventh Article of Religion.*

The Queen's Majesty hath the chief power in this realm of England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction.

Where we attribute to the Queen's Majesty the chief government, by which titles we understand the minds of some slanderous folks to be offended, we give not to our princes the ministering either of God's Word, or of the Sacraments, the which thing the injunctions also lately set forth by *Elizabeth* our Queen do most plainly testify, but that only prerogative, which we see to have been given always to all godly princes in Holy Scriptures by God himself, that is, that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil doers.

The Bishop of Rome hath no jurisdiction in this realm of England.

The laws of the realm may punish Christian men with death for heinous and grievous offences.

It is lawful for Christian men, at the commandment of the magistrate, to wear weapons, and serve in the wars.



## HISTORICAL APPENDIX (IV.).

**A Collation of the Journals of the Lords, with the Records of Convocation from 1529 to 1547, showing the Dates and the Processes by which the Convocations and the Parliament co-operated in Ecclesiastical Legislation and Business; with such further Information on this point as can be obtained from the State Papers, by Canon Stubbs, D.D.**

The Commission is appointed to inquire into the constitution and working of the Ecclesiastical Courts as created or modified under the Reformation Statutes of 24 and 25 Henry VIII., and any subsequent Acts.

I asked for a return of this nature; a collation of the Journals of the House of Lords with the Journals of Convocation from 1529 to 1547, for the purpose of showing the order in which Bills were treated in the House, and the subjects debated in Convocation, and thus showing by what machinery the two assemblies were enabled to work together, and in what ways, without intrenching on the legislative power of Parliament, the spirituality was able to make its influence felt, or to discuss matters of common interest.

From the beginning of our examinations two sets of questions have constantly emerged:—(1.) To what extent were the clergy, a spiritual body, committed to the Reformation Statutes? (2.) Supposing that an alteration in the existing system of jurisdiction should be advisable, how could the participation of the clergy, in accepting or sanctioning such a change, be obtained without offence to Parliament or loss of spiritual authority?

In the view of these points, I have collected and put together all the information accessible on the working of Convocation and Parliament during the years 1529–1547, to enable the Commission to judge—

(1.) Of the facts of the case, as, *e.g.* :

- (a.) The participation of the clergy in the Submission in 1532; and the question of their joint action in 1534, in passing the Statute of Submission by which the Court of Delegates was founded. On this point both the classes of litigants assume the facts that tell their own way; one party alleging that the clergy were not consulted in 1534, and therefore need not be consulted now; the other alleging that the clergy were not consulted, and therefore were never committed to the action of the Court of Delegates as a Spiritual Court, or to that of the Judicial Committee which succeeded to the position of the Court of Delegates.
- (β.) A second example: as to the participation of the clergy in the passing of the Statute by which married D.C.L.'s are permitted to exercise spiritual jurisdiction. On this point there has been less discussion, but it is one which is capable of important illustration. The fact that the Statute was brought in as a Bill in 1542, and withdrawn at the request of the clergy, has to be considered in relation to the question, was or was not their acquiescence demanded or granted when it became law in 1545?

I mention these as two leading facts in dispute, upon which it is necessary to have all accessible information. But there are many others.

(2.) It is not less important that the Commission should see what is the *nature of the historical or documentary evidence* before us; and what is to be inferred from the *silence* or the *absence* of record, as to the co-operation of the two bodies, *e.g.*, (α) where the record of Convocation is lost, no argument can be drawn against the co-operation of that body, if the matter of legislation be such as would ordinarily be submitted to it. (β.) When the Convocation journals pointedly mention the order for silence to be observed by the members, it is fair to infer, from the contemporary ecclesiastical transactions in the Parliament, that the Convocation may have been employed on the same subjects. In both cases the evidence of the foreign despatches might be deemed to be conclusive.

The importance of the return before us is, however, prospective also; furnishing us with examples of the ways in which, in case of a joint action in future, the rights of both assemblies may be saved.

Examples will be found of the following sorts:—

1. The action of Convocation in voting subsidies subsequently legalised by Parliament; this of course is obsolete.
2. The action of Convocation as a consultative body, to which reference is made on questions preparatory to debate in Parliament, as, *e.g.* :—
  - (α.) The examination of theses laid before the clergy as theologians and canonists, to be determined as theological or judicial questions; as the limits of papal power (1533); the summoning of general councils (1536) &c., &c.
  - (β.) The examination for acceptance or refusal of articles subsequently to be enacted; either of discipline, as in the submission of 1532; or of doctrine, as in 1536 and 1539.
  - (γ.) The examination of a Bill about to be brought into Parliament, that it may be petitioned for or against; as in 1542, &c.
  - (δ.) The discussion of the rights of the spirituality in answer to the King's reference of the complaint of the Commons in 1532; or the general question of gravamina alleged by the clergy themselves as a reason for legislation, to be initiated on their petitions.
3. A judicial function, or share by the Lower House in the judicial functions of the Upper House.
  - (α.) As to the delation, or examination of persons accused; or assessing in the judicial determination, in cases of heresy.
  - (β.) In trials of special cases under Commission from the Crown; such as the divorce case between Henry VIII. and Anne of Cleves, which by petition of the two Houses of Parliament was referred to the Convocation for decision.
4. A legislative function, within certain limits of subject and authority.
  - (α.) The joint action of the two Houses in drawing up canons.



- (β.) In giving counsel and consent to constitutions promulgated by the Archbishop.  
(γ.) In giving counsel and consent to the ecclesiastical enactments made by the King as supreme head on earth of the Church of England, at the time when he put a constitutional interpretation on the doctrine of headship.

Some of these points will be more completely elucidated by the other returns for which I asked the Commission, especially that which gives the several acts of submission, and that which is to contain a calendar of trials for heresy. But I conceive humbly that the great use of the return now made is that it reveals the process and some part of the machinery, private and public, by which the statutes were passed, which are the basis of the Courts into which we have to inquire, and that it helps us to understand the order and the bearing on one another of the several steps of legislation, without some knowledge of which neither the wording nor the history of the statutes is intelligible.

A large number of statutes have been reprinted for the use of the Commission. It appeared to me necessary to have a complete account of the circumstances under which the most important of them became law.



A COLLATION of the JOURNALS OF THE LORDS, with the RECORDS OF CONVOCATION from 1529 to co-operated in ECCLESIASTICAL LEGISLATION and BUSINESS; with such further

1529.

## PROCEEDINGS IN CONVOCATION.

*Convocation of Canterbury.*—Summoned in consequence of the King's writ of August 19.—*See* Wake, *State of the Church*, pp. 397, 473.

November 5. (Session 1.) Meets at St. Paul's: the royal writ and the Bishop of London's certificate read; proxies received and examined. A list of members and proxies is given in *Brewer's Letters, &c.*, IV., No. 6047.

November 8. (Session 2.) Richard Wolman elected and admitted as prolocutor of the Lower House.

November 12. (Session 3.) The Archbishop conferred touching six articles for reforming abuses: (1) of ordaining clerks; (2) for reforming their manners; (3) of their excessive apparel; (4) of persons promoted by simony; (5) of churches appropriated to monasteries, &c.; (6) of the abuses of the regulars; and made an order for secrecy.

No. 2 - "priests should no longer keep shops or taverns, play at dice or other forbidden games, pass the night in suspected places, be present at disreputable shows."

*D'Aubigne History of the Reformation* 5 vol (1853) 5:494

November 15, Monday. (Session 4.) Consultation on a general procession "against the Turk," to be made throughout the province, and by the Synod at St. Paul's on November 17. Conference with the Lower House on the reform of abuses.

November 19. (5.) The Archbishop directed that the suffragans should draw up provisions against the abuses, which had been represented to the Synod.

The two houses remit the sums which they had furnished to the King by way of loan.

Secret communication. Discussion of a controversy between the Bishop of Hereford and the Prior of St. John of Jerusalem.

November 22. (6.) Report on abuses and reforms presented, and further proposals made, touching appropriations, which are deferred for consideration: the Bishop of Hereford presented articles for the reform of clerks: the Bishops of Lichfield, Lincoln, and Bath on appropriations. The prolocutor and clergy also exhibited articles of reform.

November 26. (7.) The Archbishop directed an ordinance to be made touching appropriated churches and the payment of vicars; urged the drawing of articles against heretics, and enjoined on certain persons not to exercise jurisdiction "sub nomine delegationum" to the prejudice of the ordinaries.

November 29. (8.) Consultation on the heretics; the Bishop of Bath furnished a list of heretical books; and the discussion of these and other matters of reform, with the prolocutor, was deferred to another time.

December 3. (9.) A draught of provisions against the heretics read by the Archbishop's Chancellor.

December 6. (10.) Monday. Adjournment by the Bishop of London.

December 10. (11.) Adjournment by the Bishop of Bath and Wells.

## PROCEEDINGS OF PARLIAMENT.

*Parliament*, 21 *Hen. VIII.*—Summoned by writ of August 9, to meet November 3, at Blackfriars.—*Rot. Parl.* vol. I. app. cli.

November 3. Opened with a speech by More as Chancellor.

November 4. Adjourned to Westminster.

November 6. Thomas Audley presented and admitted as Speaker of the House of Commons: a list of the members of the House of Commons is given in *Brewer's Letters, &c.*, IV. No. 6043.

[The Ecclesiastical Acts of the Session are,—

21 *Hen. VIII.* c. 5.—An Act concerning fines and sums of money to be taken by the ministers of bishops and other ordinaries of Holy Church for the probate of testaments.

21 *Hen. VIII.* c. 6.—An Act concerning the taking of mortuaries or demanding, receiving, or claiming of the same.

21 *Hen. VIII.* c. 13.—An Act that no spiritual persons shall take to farm of the King or any other person any lands or tenements for term of life, lives, years, or at will, &c., and for pluralities of benefices; and for residence.

21 *Hen. VIII.* c. 24.—The Act for the release of loans to the King, &c.

21 *Hen. VIII.* c. 1.—The Act of general pardon excepts from the benefits of the pardon in § 7 all offences and contempts against the statutes of provision and præmunire.]

December 1. Articles against Wolsey exhibited by the Lords in Parliament (*Brewer, Letters, &c.*, IV. 6075); rejected under Cromwell's influence in the House of Commons.—*Herbert, Hen. VIII.*, p. 302.



1547, showing the DATES and the PROCESSES by which the CONVOCATIONS and the PARLIAMENT INFORMATION on this point as can be obtained from the STATE PAPERS.

## NOTES FROM FOREIGN CORRESPONDENCE.

November 8. Spanish Dispatches [211.] *Chapuys to the Emperor*.—Description of the opening of Parliament on November 3, More's speech announcing the King's intention of an ecclesiastical reform, and the adjournment to Westminster. November 4 and 5. The Estates elected the Archbishop as prolocutor [perhaps of the Lords, More being a commoner]; the King rejected him as too old, and another was chosen. November 6. The King attended, and the prolocutor was sworn.

November 17. [216.] The Parliament, now sitting, for the reduction of taxation and Church reforms, has taken no steps relative to Wolsey.

December 6. [Spanish Dispatches, 224.] Parliament prorogued December 5 till after Easter. Its chief business has been legislation against the clergy and the remittal of the loan, about 2,000,000 ducats. The Bill has passed, but mischief may come of it.

December 9. [Spanish Dispatches, 228.] Parliament is still sitting. A motion will be made to-morrow that all naturalisations granted by Wolsey shall be annulled, and against the export of gold and silver. The divorce may be brought before this Parliament, in which it is said that the majority has been bribed and gained over in favour of the King.

December 13. [Spanish Dispatches, 232.] The reforms of the clergy are chiefly owing to the anger of Anne Boleyn's party at the advocacy of the divorce case to Rome. Advantage will be taken of this to proceed

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## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

*Hall's Chronicle*, page 764.—Parliament was opened on November 3, and adjourned to Westminster.

Page 765.—November 6. The King came to Parliament and admitted the Speaker elect.

The Commons propounded six grievances against the clergy; touching: 1, probate; 2, mortuaries; 3, farming by clergy; 4, tanhouses kept by spiritual men; 5, non-residence of clergy; 6, pluralities.

Page 766.—The burgesses had three Bills drawn up—

- (1.) On probate; 21 Hen. VIII. c. 5.
- (2.) On mortuaries; 21 Hen. VIII. c. 6.
- (3.) On non-residence, pluralities and farming by spiritual men; 21 Hen. VIII. c. 13.

The Bill on mortuaries was sent up first to the Lords, and it was received with little attention by the Lords Spiritual as not much affecting them; two days afterwards the Bill on Probate was presented. This the Bishops objected to strongly, the Bishop of Rochester declaring that the proposals of the Commons tended to the destruction of the Church, pointing to Bohemia as an example to be avoided, and ascribing the whole movement to lack of faith. The Commons took umbrage at this, and sent their Speaker and 30 members to the King to complain of the Bishop's words. The King sent for the Archbishop and six other Bishops. Bishop Fisher explained his speech, and the King reported this as an apology to the Commons.

Page 767.—Conferences were held between the Lords and the Commons on the Probate and Mortuary Bills; the Lords Temporal inclined to pass them, but the matter remained unconcluded for some time.

During this time the Bill for the Release of the Loan, having passed the Lords, was sent to the Commons, and, after some argument, passed by them.

As the letter of Chapuys, 224, states that the Loan Bill, 21 Hen. VIII. c. 24, had passed before December 5, it seems probable that the whole of the above business had been transacted during the month of November, and that the Bills against the clergy were incomplete at that date.

Page 767.—The news of the remittal of the loan produced general discontent. To allay this the King passed a general pardon, 21 Hen. VIII. c. 1., and had new Bills drawn on the subject of probate and mortuaries, "which Bills were so reasonable that the Spiritual Lords assented to them although they were sore against their minds, and, in especial, the probate of testaments sore displeased the Bishops, and the mortuaries sore displeased the parsons and vicars."

When these Acts had passed, the Commons sent up the Bill against pluralities; to this the Lords spiritual refused to consent. The King thereupon proposed that eight Lords and eight Commons should meet in the Star Chamber to debate the case. The Lords Temporal on the joint committee voted with the Commons, and so modified the Bill that it passed the Upper House the next day. It is possible that the "sore debating" "of an afternoon" in the Star Chamber was the long sitting mentioned by Chapuys as occurring on the 12th of December.

*Hall's Chronicle*, page 768.—On the 17th of December the King in the Parliament Chamber gave his assent to the Bills, and prorogued the Parliament to the next year.

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## 1529.

## PROCEEDINGS IN CONVOCATION.

[December 13.] (12.) Adjournment by the Bishop of London to December 16, Thursday.

[December 16.] (13.) Adjournment by the Bishop of London to Saturday following.

December 18. (14.) Adjournment by the Bishop of London to Friday following.

December 24. (15.) The Bishop of St. David's and the Abbot of Westminster nominated to represent the Archbishop in the synod. Convocation prorogued to April 29.—Wake, p. 473; Wilkins, Conc. iii. 717.

## PROCEEDINGS OF PARLIAMENT.

December 17. Parliament prorogued to April 27, 1530.—Wake, p. 397.

## 1530.

April 29. The Convocation, adjourned to April 29, after nine prorogations of sessions and admonitions, repeatedly given by the Archbishop, that nothing said or read in the Chapter House should be revealed, was adjourned to the Chapter House at Westminster, to meet on the 21st of January 1531.—Wilkins, Conc. iii. 724. The prorogations are noted below from Archbishop Wake's MSS.

[May 24. An assembly was held in St. Edward's Chamber, at which the King, the Chancellor, the Archbishop of Canterbury, and the Bishop of Durham, with others, were present; in which divers opinions contained in heretical books were condemned, and in which the King declared that "he would cause the New Testament to be by learned men faithfully and purely translated into English tongue, to be given to the people when they should be fit to receive it."—Reg. Warham, f. 188; Wilkins, Conc. iii. 727.]

April 26. Prorogued to June 22.—[Brewer, Letters, &c., 6356.]

June 22. Prorogued to October 1.—[*ib.* 6469.]

—— Prorogued to October 22.—[*ib.* 6687.]

October 21. Prorogued to January 6.—[*ib.* 6699.]

May 12. [Venetian Dispatches, 577.] The King has summoned Parliament for the discussion of the divorce.

June 28. [Venetian Dispatches, 584.] Parliament is now holding the summer session; the Duke of Norfolk and the Chancellor are there. [In these two notes the writer has mistaken the Special Council for a Parliament.]

July 13. The letter to the Pope, asking for a speedy determination on the question of divorce, is signed by the following, the signatures having evidently been collected by commission:—The two archbishops, two dukes, two marquesses, thirteen earls, four bishops, twenty-six barons, twenty-two abbots, and eleven knights and doctors of the Parliament: of these last four were members of the Lower House of Convocation. The document is entitled "The Parliament's Letter to the Pope;" but no Parliament was in session.—Pocock, Records of the Reformation, i. 429; Herbert, Hen. VIII. p. 331.

The date of the letter is given in the Pope's reply.—Herbert, p. 335.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
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quickly, for they will make large sums by the sale of Church property; and, as the people hate the priests, they may persuade them to declare that the Pope has no dispensing power in marriages, and that no more of their substance shall go to Rome in future. The ambassador writes for instructions in case the Queen should oppose the King in Parliament.

During the last fortnight an effort has been made to get a prorogation to next February. Yesterday's sitting was very long and late. No new Bills have been passed since December 9. Now that the loans are remitted the King keeps Parliament together only that he may bleed the clergy and lay before the members the foreign opinions about the divorce.

December 31. [Spanish Dispatches, 241.] The King has failed to induce any member of the present Parliament to bring forward the question of the divorce. Parliament has been prorogued to April 26.

March 16. [Spanish Dispatches, 270.] There is a report that the Parliament, which was to have met on April 22, will be further prorogued; the King, it was said, wished to prorogue it by his own authority and without formality, but it appeared that the consent of the Parliament itself was required.

April 23. [Spanish Dispatches, 290.] The King is coming to London next week to prorogue the Estates and Parliament till September.

May 10. [Spanish Dispatches, 302.] A convocation of the prelates and theologians of England is being held. This is not connected with the business of the divorce, but its object is to prevent the intrusion of Lutheran heresy. The King has come to London to attend it, and intends to be daily present at the meetings as one most competent to decide on religious matters. The ambassador suspects that something will be attempted prejudicial to the Queen.

June 15. [Spanish Dispatches, 354.] On the 10th of June the ambassador heard that the King had summoned certain prelates and officials to Court on the 12th. At this assembly a conjoint letter to the Pope was drawn up, urging the necessity of a speedy divorce, and threatening recourse to some other means of redress. The meeting was then adjourned to June 16.

June 29. [Spanish Dispatches, 366.] The King has secured the signatures and seals of the knights of his order and other great men to the letter by canvassing them separately, and two days ago sent out commissioners to collect signatures. If this method had not been adopted, the majority would have been in the Queen's favour. If their real opinion is wanted the Pope should have it taken by ballot.

July 11. [Spanish Dispatches, 373.]

August 2. [Spanish Dispatches, 396.] Parliament has been prorogued to October 5, the marriage question being the chief cause of its re-assembling. The ambassador has seen lawyers who fear that, even if the votes are taken separately, as was done in the case of the nobles, they will be compelled to accede to the King's will. The King is carrying on a prosecution against the priests and prelates who obtained preferment whilst the Cardinal was legate: the surest means of getting a large sum of money and of obtaining the sanction of the clergy for the projected marriage.

August 20. [Spanish Dispatches, 411.] The King had called a Council for August 11 at Hampton Court on the divorce; the meeting lasted until the 16th.

September 5. [Spanish Dispatches, 422.]

September 14. [Spanish Dispatches, 425.] It is said that the Parliament is to be prorogued to the 20th of October.

Page 771.—May 25. In the Star Chamber the King met the prelates and Council, and, after deliberation on the translation of the New Testament by Tyndall and Joy, the Bishops were ordered "that they calling to them the best learned men of the Universities should cause a new translation to be made."



1530

## PROCEEDINGS IN CONVOCATION.

## PROCEEDINGS OF PARLIAMENT.

October 16. [Letters, &c. Brewer, iii., No. 6687.] Tunstall, Bishop of Durham, informs Wolsey that he has summoned the York Convocation to meet on November 7.

October 29. [Venetian Dispatches, 629.] By the King's consent Cardinal Wolsey has called the prelates together about holding a convocation or Parliament.

1531.

January 7. (Session 16.) The Bishop of St. David's adjourns the Convocation to Monday, January 9.

January 9. (Session 17.) The Bishop of Bath and Wells has letters of commission and adjourns to Tuesday.

January 10. (Session 18.) The Bishop of Bath and Wells adjourns to Thursday.

January 12. (Session 19.) The Archbishop has secret communications with the abbots and priors "de causis quæ tunc erant agendæ, et eos singulos admonuit ne quicquam revelent de hujusmodi communicationibus."

January 14. (Session 20.) The Bishop of London has secret communication with both Houses.

January 17. (Session 21.) Adjournment.

January 19. (Session 22.) Adjournment to January 21 at Westminster.



## NOTES FROM FOREIGN CORRESPONDENCE.

September 16. [Spanish Dispatches, 429.] Letter from the Baron de Borgho, the papal nuncio, to the Pope. The King said that he had prorogued the Parliament, which was to have met on October 2, for twenty days longer.

September 20. [Spanish Dispatches, 433.] *Chapuis to the Emperor*.—Parliament will meet about October 20. The greater part of the prelates and clergy are in great consternation, for they are being proceeded against for having paid the Cardinal honour as papal legate, and the King maintains that for this reason all their goods and preferments are to be confiscated and they themselves imprisoned. The number of bishops and abbots in this plight is above 60, and of the other clergy 150. The King has just signed an edict to spite the Pope.

October 1. [Spanish Dispatches, 445.] The King has told the nuncio that he does not recollect any edict published to the Pope's prejudice, but that, by virtue of his prerogative, he had desired to guard against any opposition to the ordinances which he had already made, and was about to make, in Parliament, for the reformation of the clergy, and had purposely avoided delay lest the Pope should in the meantime issue some hostile decretal.

October 15. [Spanish Dispatches, 460.] The King has called together the clergy and lawyers, to ascertain whether, in virtue of the privileges possessed by this kingdom, Parliament could and would enact that, notwithstanding the Pope's prohibition, the cause of the divorce be decided by the Archbishop of Canterbury. They have answered in the negative, and the King has prorogued Parliament to February. The King has told the nuncio that, if the Pope would not show him more consideration, he would show the world that the Pope had no greater authority than Moses, and that every claim not grounded on Scripture was mere usurpation; that the great concourse of people present had come solely and exclusively to request him to bastinate the clergy, who were hated by both nobles and people.

October 31. [Spanish Dispatches, 481.]

November 13. [Spanish Dispatches, 492.] The King has told the ambassador that the Convocation of Councils, except on matters of faith, was the province of secular princes, not of the Pope; and also that it would be doing God service to take away the temporalities from the clergy.

November 27. [Spanish Dispatches, 509.] It is reported that in the ensuing Parliament, which is to sit on February 2, the King will moot the divorce question. Exertions are made to have everything ready for the Parliament.

December 4. [Spanish Dispatches, 522.]

December 17. [Spanish Dispatches, 539.]

December 21. [Spanish Dispatches, 547.] The prelates have been called together for the 12th of January, and Parliament, which was to have met on February 2, is now summoned for January 16.

December 21. [Spanish Dispatches, 549.]

December 29. [Spanish Dispatches, 555.] Parliament is prorogued here from time to time as if they did not know their own minds about the measures to be proposed therein.

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

*Hall's Chronicle*, page 772.—September 19. Proclamation made in London that no person purchase or attempt to purchase, &c. from Rome anything containing matter prejudicial to the King's authority, jurisdiction, or prerogative. The proclamation is printed, with the date, September 12, in Pocock's Records of the Reformation, ii. 49.

October 21. [Letters, &c. of 1530, No. 6699.] *Cromwell to Wolsey*.—The Parliament is prorogued until the 6th of January. The prelates shall not appear in the præmunire.



## 1531.

## PROCEEDINGS IN CONVOCATION.

January 12. The Convocation of York meets by writ dated December 7.

January 14. The Convocation of York agrees to the remittal of the loan, passed in the Convocation of Canterbury November 19, 1529.

January 21. (23.) The Convocation of Canterbury meets at Westminster in the Chapter House; the Abbot protests against any infringement of his privileges, and the Archbishop declares that, by using the Chapter House for the Upper House and another place for the Lower House, he does not intend to derogate from immunities or exemptions of the monastery.

January 23. (24.) Discussion on the grant of subsidy in the Upper House.

January 24. (25.) Both Houses agree to a grant of a subsidy of 100,044*l.* 8*s.* 8*d.* The mendicant orders, and the proctor for the prior of the hospitallers protesting; their reasons are referred by the Archbishop to the Bishops of Ely and Bath.

January 26. (26.) Communications.

January 27. (27.) Discussion on the levy of subsidy.

January 28. (28.) Communication with the Lower House.

January 31. (29.) Protest by the mendicant friars against the subsidy.

February 1. (30.) Communication on the subsidy.

February 4. (31.) Mendicant friars exhibit their bulls.

February 7. (Session 32.) The Archbishop, after a conference with certain councillors and justices, holds a consultation with the prolocutor and the Lower House on five points concerning the form or bill by which the subsidy is presented:—

1. The words added in the preamble, "*Ecclesiæ et cleri Anglicani ejus protector et supremum caput is solus est.*"

2. The words, "*quem metum atque periculum rex noster invictissimus a nobis depulit, et curavit ut in quiete et securâ pace Deo ministrare et curæ animarum ejus majestati commissæ et populo sibi commissio debite inservire possimus.*"

3. The words, "*Privilegia et libertates ejusdem, quæ regali suæ potestati et legibus regni sui non detrahunt, confirmando defendit.*"

4. "*Generalem veniam et perdonationem de omnibus eorum transgressionibus pœnarium legum et statutorum hujus regni, tum ceterorum, [tum etiam statutorum de Provisoribus et Præmunire,] in tam ampla forma concedere dignetur quam in isto parlamento suis omnibus subditis (statutis de Præmunire nobis adauctis) concessa fuit.*"

5. "*Ita quod omnes laici suit inde onerati.*"

February 8. (Session 33.) After a discussion with the Lower House the fifth article is conceded. In this session the justices exhibited a copy of the exceptions made in the general pardon which was to be granted in consideration of the subsidy; the justices declaring that they were not empowered to conclude the matter (of including the statutes of provisors and præmunire among the Acts, offences against which were to be pardoned), until the bishops and clergy had come to a determination on the first article. The recognition of the King's supremacy, as stated in that article, did not please the bishops and clergy, who demanded that it should be modified.

February 9. (34.) The form of recognition was discussed in three sessions. The King sent the Lord Rochford with the form "*Cujus protector et supremum caput post Deum is solus est,*" and refused further communication with the Convocation on the point.

February 9. (34.) The justices came and demanded an answer on the articles: the King refused to accept any modification. The Lower House asked for more time for discussion.

February 10. (35.) After an attempt made by the Bishops of London, Lincoln, and Exeter to see the King, and long discussions on the articles, the Lord Rochford appeared and demanded a full answer. The prolocutor asserted that the clergy had not yet agreed.

February 11. (36.) The Archbishop proposed the form "*Ecclesiæ et cleri Anglicani ejus singularem protectorem, unicum et supremum dominum, et quantum per Christi legem licet, etiam supremum caput, ipsius majestatem recognoscimus.*" To this he asked the consent of the Bishops, saying, "*Qui tacet consentire videtur.*" To which one replied, "*Itaque tacemus omnes.*" The article then received the assent of both Houses unanimously. The Bishops who accepted the article were the Archbishop, and the Bishops of London, Coventry, Rochester, Ely, Exeter, Lincoln, St. Asaph, and Bath.

## PROCEEDINGS OF PARLIAMENT.

22 *Hen. VIII.*—January 16. Meeting of Parliament.

[No journals.] Rot. Parl. i. app. clxvii.

[*Ecclesiastical Acts*, 22 *Hen. VIII.*:—*Cap. 14.*—An Act concerning abjurations into sanctuaries.

*Cap. 15.*—An Act concerning the pardon granted to the King's spiritual subjects of the province of Canterbury for the præmunire.

*Cap. 16.*—An Act concerning the pardon granted to the King's temporal subjects for the præmunire.]



## NOTES FROM FOREIGN CORRESPONDENCE.

January 1. [Letters, Vol. V. No. 24.] *Chapuy's to the Emperor*.—It is believed that the business of the marriage will be completed in the coming Parliament.

January 10. [Letters, &c., 40.]

January 13. [Letters, &c., 45.] Yesterday the prelates met to consider what was to be treated in Parliament. No mention was made of the Queen's affair. It is thought that the session will be a short one.

January 23. [Letters, &c., 62.] Nothing has been done in Parliament touching the divorce. The principal cause of the meeting is to exact from the clergy a composition for a pardon from the penalties of *præmunire*. Although the clergy knew themselves to be innocent, they have offered 160,000 ducats; the King demands 400,000. "About five days ago it was agreed between the nuncio and me, that he should go to the said ecclesiastics in their congregation and recommend them to support the immunity of the Church and to inform themselves about the Queen's affair, showing them the letters which the Pope has written to them thereupon, and offering to intercede for them with the King about the gift with which he wishes to charge them.

"On coming into the congregation they were all utterly astonished and scandalised, and without allowing him to open his mouth, they begged him to leave them in peace, for they had not the King's leave to speak with him, and, if he came to execute any apostolic mandate, he ought to address himself to the Archbishop of Canterbury their chief, who was not present." The nuncio departed and explained his intention to the Bishop of London.

January 31. [Letters, &c., 70.] The clergy, in spite of the aid which the nuncio, who has remonstrated strongly with the Council, desired to give them, have made a composition with the King for 400,000 ducats payable in five or six years. He is now showing them favour and gives them hopes of restoring the liberties taken away in the last Parliament. This is to bring about a union between the clergy and nobles, "so as to make of the two estates only one body." They have not yet consented to the said union.

February 14. [Letters, &c., 105.] Since my last letter the clergy have withdrawn their offer of money, (1) because the King insisted that in case of war it should be paid in less than five years; and had also (2) refused to restore their liberties and give them exemption from the penalties of the *præmunire*; and (3) because the King declared to them the importance of the said law of *præmunire* to guard himself from being misunderstood; which law no person in England can understand, and its interpretation lies solely in the King's head, who amplifies it and declares it at his pleasure making it apply to any case he pleases, the penalty being confiscation of bodies and goods. At last, after a good deal of negotiation, the matter has been settled, that the King shall not press for payment before the expiration of the said five years, and that of the three demands of the clergy they should have that of the exemption, and nothing more. . . . The thing which has been treated to the Pope's prejudice is, that the clergy have been compelled, under pain of the said law of *præmunire*, to accept the King as head of the church, which implies in effect as much as if they had declared him Pope of England. It is true that the clergy have added to this declaration that they did so only so far as permitted by the law of God. But that is all the same, as far as the King is concerned, as if they had made no such reservation; for no one now will be so bold as to contest with his lord the importance of this reservation.

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

*Hall's Chronicle*, page 774.—"The whole clergy of England ever supported and maintained the power legantyne of the cardinal, wherefore the King's counsel learned said plainly that they were all in the *præmunire*; the Spiritual Lords were called by process into the King's Bench to answer, but before their day of appearance they in their Convocation concluded an humble submission in writing and offered the King 100,000*l.* to be their good lord, and also to give them a pardon of all their offences touching the *præmunire* by Act of Parliament, the which offer with much labour was accepted and their pardon promised. In this submission the clergy called the King *supreme head of the Church of England*, which thing they never confessed before; whereupon many things followed after which you shall hear."



1531.

## PROCEEDINGS IN CONVOCATION.

## PROCEEDINGS OF PARLIAMENT.

February 13. (37.) Several sessions were occupied in determining the mode in which the subsidy should be paid, and in considering the reform of abuses on six points:—

1. Of the promotion of clerks to holy orders and admission to benefices with cure.
2. Of priests convict.
3. Of admitting clerks by proctors.
4. Of the life and manners of clerks to be ordained.
5. Of the apparel of clerks.
6. Of heretics.

On these points constitutions were read and amended and reserved for further examination.

February 14. (38.) Discussion on the subsidy.

February 15. (39.) Discussion on reform of abuses.

February 16. (40.) On constitutions; the prolocutor prayed the Upper House for reforms.

February 17. (41.) On the constitutions.

February 18. (42.) The Acts of the last four days read and ratified by the Archbishop. Further proceedings on the constitutions.

February 20. (43.) Agreed that the constitutions should be promulgated.

February 23. (44.) Completion of the arrangements for the subsidy.

February 25. (Session 45.) The prolocutor laid before the synod the errors contained in the will of William Tracy and asked that they should be condemned.

The King's answer to the address on the subsidy; the prolocutor demanded delay.

February 27. (46.) Communications on the above matters.

February 28. (47.) Communication "de diebus festis," "de impressione librorum," &c. The proeme to the concession of subsidy ratified.

March 1. (48.) The Lower House are not agreed as to the Constitutions.

March 2. (49.) The Bishop of London read certain articles touching the subsidy, and also a "libellus famosus" against the clergy.

March 3. (50.) Articles exhibited against Crome, Latimer, and Bilney.

March 4. (51.) Communications.

March 6. (52.) Touching the letter and certificate to be presented to the King. The examination of a book of Statutes committed to certain of the bishops.

March 8. (Session 53.) A discussion on the reform of grammar schools: "quia multiplex et varius in scholis grammaticalibus" "modus est docendi grammaticam, visum fuit necessarium quod" "una et eadem edatur formula auctoritate hujus sacræ synodi, in qualibet et singula schola grammaticali per Cantuariensem provinciam usitanda et edocenda." In the same Session there was a discussion on the form of general excommunication.

March 9. (54.) Commission to the Bishop of St. Asaph.

March 10. (55.) The Bishop of Bath exhibited a code of Statutes which the Bishop of London publicly read, making additions and detractions. The Lower House was then summoned to hear the general pardon of the clergy.

March 11. (56.) Adjournment.

March 13. (57.) Discussion on the general pardon.

March 14. (58.) Discussion on the form of the general pardon as drawn by the clergy, and the alterations made therein by the Council. Discussion on the errors of Crome.

March 15. (59.) Discussion on Crome, on the book of Constitutions, and on the payment of subsidy.

March 16. (Session 60.) The Archbishop treated of the dissolution of appropriations and the appointment of vicars. The prolocutor exhibited a book of Constitutions, which was committed for review to the Bishop of Ely.

March 17. (Session 61.) Continuation of the business of the last sitting.

March 18. (Session 62.) Articles repeated against Crome, Bilney, and Latimer; further proceedings on Tracy's will.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

February 21. [Letters, &c., V.n. 112.] And now the Act has been passed against the Pope, of which I wrote in my last. It has been drawn up in these words, "Hujus cleri et ecclesiæ Anglicanæ dominum ac protectorem singularem, ejusque unicum summum ac supremum caput, quantum per legem Christi licet, regiam majestatem agnoscimus et confitemur." . . . If the Pope had ordered the lady to be separated from the King, the King would never have pretended to claim sovereignty over the Church, for, as far as I can understand, she and her father have been the principal cause of it. The latter, speaking of the affair a few days ago, to the Bishop of Rochester, said that by authority of Scripture he could prove that, when God left this world, he left no successor or vicar. There is none that does not blame this usurpation except those who have promoted it. The Chancellor is so horrified at it that he is anxious to resign his office. The prelates will have to do as they are bid in the matter of the divorce.

March 1. [Letters, &c., V.n. 120.] The Parliament continues but has done nothing, as I am told, and it is supposed that the King keeps it sitting for some mysterious purpose. Everybody is tired of it, and every day someone asks leave of absence, which is never refused to those who take the Queen's part. . . . The King went yesterday for the first time since the Session recommenced to Parliament, and stayed an hour and a half or two hours in the House of Lords, and did not go down to the Commons. He expressed to them his desire for justice and the defence of the kingdom, and afterwards desired them to take into consideration certain liberties of the Church in this kingdom, by which malefactors had hitherto full immunity. He also called attention to the case of the Bishop of Rochester's cook.

March 8. [Letters, &c., V.n. 124.] The clergy are more conscious every day of the great error they committed in acknowledging the King as sovereign of the Church, and they are urgent in the Parliament to retract it, otherwise they say they will not pay a penny of the 400,000 ducats. What will be the issue no one knows. They are discussing the enactment of sumptuary laws, and the prohibition of the pastime of cross-bows and hand guns, especially to foreigners, to whom also they wish to forbid the use of the bow. Nearly the whole time of the Parliament has been occupied with these petty matters and with complaints between different towns and villages, and also complaints, for the most part feigned, against the priests.

March 22. [Letters, &c., V.n. 148.] I have visited the Duke of Norfolk to learn what was doing in Parliament against foreigners. I desired that he would not allow new imposts to be made contrary to the old treaties. He said that there was no fear of this, that the matter was remitted to the Chancellor and five bishops, doctors and others, and that, for whatsoever concerned the intercourse, he would care as for his own eyes. He said that there were many Lutherans in England, and that on the previous day the finest and most learned preacher in England had been taken and was in danger of being burned. This preacher, being detained by the Archbishop of Canterbury, would not answer any interrogatory, demanding, in the first place, that secular persons of the Council should be present at his trial. There were accordingly deputed the Duke of Norfolk, the Earls of Oxford, Wiltshire, and Talbot, who heard several errors. Two days afterwards the priest, either weary of detention or fearing that the Archbishop would proceed against him, appealed to the King as the Archbishop's sovereign. He was accordingly brought before the King, in whose presence several bishops preached and disputed against him. The King, taking in his hands a roll, containing the articles of heresy objected against him, noticed the article in which he said the Pope was not the head of the Christian Church, and said that that ought not to be entered among the heresies, for it was quite certain and true. After the King had heard the preacher, he was dismissed in liberty to his house, and he is to preach one of these days and declare or retract some things which the King does not think correct [juridiques]. . . . It is said that the Parliament will be prorogued on March 24.



## 1531.

## PROCEEDINGS IN CONVOCATION.

March 20. (63.) The book of Statutes read and handed to the Bishop of Ely to be reformed.

March 21. (64.) Discussion of various matters, Tracy's will among them.

March 22. (Session 65.) In this Session the Bishop of London read certain Statutes, to be further examined, on the subjects which had been discussed and which were afterwards issued as ordinances, [printed in Wilkins, *Concilia*, iii. 717, sq.] viz., on the abuses in the chapels of the hospitallers, "de otio vitando;" of appointing schoolmasters and a uniform mode of teaching; of inquisition into heresy; of study at the universities; of avoiding simony; and of the imprisonment of heretics. The form agreed on for the payment of the subsidy was read.

March 23. (Session 66.) Sentence pronounced by the Archbishop against Tracy's will, and his executors summoned for October 16.

March 24. (67.) Constitutions read.

March 27. (Session 68.) Statutes on clerks convict read.

March 28. (Session 69.) John Nicolson examined on articles concerning heresy.

March 29. (Session 70.) Sentence given against Tracy's will.

March 30. (Session 71.) Adjournment.

April 1. (Session 72.)

In Sessions 70 and 72 the Bill of the subsidy was examined and confirmed, and the Convocation was prorogued to the 16th of October.

May 4. The Convocation of York grant the King a subsidy of 18,040*l.* 0*s.* 10*d.*; in a Bill conceived in the same language, *mutatis mutandis*, with that passed by the Convocation of Canterbury on the 22nd of March. Bishop Tunstall protested against the form in which the Royal supremacy was recognised, proposing the introduction of the words "in temporalibus."—Wilkins, *Conc.* iii. 745.

The King's answer to this protest is printed in the *Cabala*, ii. 1-8, but without date.

October 16. Convocation of Canterbury (Session 73). Proceedings in relation to Tracy's will.

November 7. (74.) Adjournment to January 16.

December 23. Writ for prorogation of the Convocation of York to February 7, 1532.—Wilkins, iii. 748.

## PROCEEDINGS OF PARLIAMENT.

[March 31; prorogation to October 14.]

October; prorogation to November 6.

October; prorogation to January 15.

## 1532.

January 16. (75.) Convocation of Canterbury. Adjournment to January 19.

January 19. (76.) Adjournment to January 23.

January 23. Convocation of Canterbury. (Session 77.) The Statutes "de qualitate ordinandorum, de idoneitate admittendorum ad beneficia; de substitutis beneficiariorum per ordinarios admittendis, de non admittendis ad beneficia per procuratorem; de causa correctionis ex officio, de absentibus causa studii; de iis qui, deserta residentia in cura propria, recipiunt stipendia aliunde; de concionatoribus; de hæreticis et hæreticorum libris;" read.

January 25. (Session 78.) Statutes read: "de clericis convictis; de vestibus et indumentis clericorum; de clericis venatoribus; de clericis et religiosis lapsis in vitium carnis; de simonia vitanda; de iis qui pactionem faciunt cum presentatis; de otio vitando et honesta conversatione clericorum; de dilapidationibus; de ludimagistris."

January 27. (Session 79.) The prolocutor sent for to explain the amendments of the Lower House.

23 *Hen. VIII.* January 15. Meeting of Parliament.—(Rolls of Parliament, i. app. cxcvii.)

[Ecclesiastical Acts:—

23 *Hen. VIII. c. 1.*—An Act that no person committing petty treason, murder, or felony shall be admitted to his clergy under subdeacon.

23 *Hen. VIII. c. 9.*—An Act that no person shall be cited out of the diocese where her or she dwelleth except in certain cases.

23 *Hen. VIII. c. 10.*—An Act for feoffments and assurance of lands and tenements made to the use of any parish church, chapel, or such like.

23 *Hen. VIII. c. 11.*—An Act for breaking of prison by clerks convict.



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April 2. [Letters, &c., V.n. 171.] Since the clergy have obtained exemption from the *præmunire*, the laity, understanding that the King would make his account to draw from them a large sum, insisted that they should have a similar exemption, showing that they had not incurred forfeiture, or, if they had, considering the large sums they had paid heretofore, they should be absolved. As the King would not listen to this for some days there were murmurs in the House of Commons, and it was there said in the presence of some members of the Council, that the King had burdened and oppressed his kingdom with more imposts and exactions than any three or four of his predecessors, and he ought to consider that the strength of the King lay in the affections of his people. . . . On learning this the King granted the exemption, which was published in Parliament on Wednesday last without any reservation. On Thursday the Chancellor explained to the Parliament the King's mind with respect to the divorce; his scruples of conscience solely being the reason for his proceedings. He also laid before them the opinions received from the Universities, which were read by Brian Tuke. This proceeding took place in the House of Lords; when the opinions had been read, the Bishops of Lincoln and London spoke in favour of the King. The Bishops of St. Asaph and Bath protested that this was not the place to discuss the question, and that there was not time to demonstrate the justice of the Queen's cause; they could only say that the arguments alleged on the King's behalf were really opposed to him. The Duke of Norfolk then interfered saying that the documents were sent by the King not to be discussed, but to explain his scruples. The Chancellor was asked his opinion, but he only said that he had many times declared it to the King. Talbot, similarly questioned, said that it was not for him to express a judgment; he was content to refer the matter to the proper authorities. This closed the proceedings in the House of Lords. The Chancellor, with the Dukes of Norfolk and Suffolk, the Bishops of Lincoln and London, and Brian Tuke, went down to the House of Commons and laid the papers before them; the Chancellor saying that the King wished the members, when they returned to the country, to inform their neighbours of the truth. The two bishops then declared on their conscience that the King's marriage with Katharine was illegal. The Chancellor and his companions retired from the House, the Commons saying nothing, but showing displeasure and regret more than anything else. The next day, March 31st, the King in person prorogued Parliament to the 14th of October.

May 22. [Letters, &c., V.n. 251.] Four days ago the clergy of York and Durham sent to the King a strong protestation against the supremacy which he pretends to have over them. The province of Canterbury have done the same, of which I send a copy to Granvella.

October 9. [Letters, &c., V.n. 472.] Parliament has been prorogued to the Monday after All Saints.

October 24. [Letters, &c., V.n. 488.] Parliament has been again prorogued to the 15th of January.

December 29. [Letters, &c., V.n. 614.] Parliament has been prorogued, as they do not know what to discuss.

January 22. [Letters, &c., V.n. 737.] Parliament opened on the 13th. It is summoned principally for the divorce and to ask money from the laity. Nothing has yet been proposed; they are waiting for news from Rome. Almost all the great Lords Spiritual and Temporal are present, but the Bishop of Durham is not summoned; and it is said that the Bishop of Rochester also is not summoned. Reginald Pole has asked leave of absence; he told the King that if he stayed in England he must attend Parliament and speak according to his conscience.

January 30. [Venetian Dispatches, 726.] Parliament met on the 16th, and again on the 19th. The King wants 2,000,000 of ducats.

January 30. [Letters, &c., 762.] The Queen's affair has not been discussed in Parliament. The writer has heard

*Hall's Chronicle*, page 774.—“When the Parliament was begun, the 6th of January, the pardon of the spiritual persons was signed with the King's hand and sent to the Lords, which in time convenient assented to the Bill and sent it to the Commons in the Lower House; and when it was read diverse forward persons would in no wise assent to it except all men were pardoned.” In opposition it was urged that the King could not be compelled to pardon, and that to throw out the Bill would be to hurt the clergy and not benefit themselves. Notwithstanding this, Audley, the Speaker, and a number of members, were sent to the King with a petition to be included in the pardon. The King replied that as they had declined to assent to the pardon of the clergy, which, notwithstanding, he could pass under the Great Seal, he must be well advised before he pardoned the Commons; he would not be compelled to do so.

The deputation left him, murmuring against Cromwell as the betrayer of their secrets. The King, however, caused a pardon of the *præmunire* to be drawn and sent down by the Attorney General; for this he received the thanks of the Commons.

On the 30th of March the Chancellor laid the opinions of the Universities before the Commons, and they were read by Sir Brian Tuke. (*Hall's Chronicle*, page 780.) The Chancellor then bade them make these matters known in their counties.

When Easter approached the Parliament ended.

*Hall's Chronicle*, page 784.—After Christmas, the 15th day of January, the Parliament began to sit; and amongst divers griefs which the Commons were grieved with they sore complained of the cruelty of the ordinaries for calling men before them *ex officio*. . . . When this matter and other exactions done by the clergy in their courts were long debated in the Common House, at the last it was concluded and agreed that all the griefs which the temporal men were grieved with should be put in writing and delivered to the King; which by great advice was done.



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## PROCEEDINGS IN CONVOCATION.

January 30. (Session 80.) The Lower House disagree with some of the constitutions.

February 1. (Session 81.) The prolocutor petitions for the condemnation of the will of William Brown, and for the exhumation of William Tracy. Discussion on the exemption of certain orders from the payment of the subsidy.

February 5. (Session 82.) Continuation of above business.

February 6. (Session 83.) Communication with the prolocutor.

February 8. (Session 84.) Readings and re-readings of the constitutions mentioned above. The Lower House ordered to attend and show their opinion on the proposed constitutions.

February 9. (Session 85.) The Lower House disagree with some of the constitutions; and the discussion is postponed.

February 15. (Session 86.) Secret communications.

[February 7. Convocation of York; a tenth granted to the King.—Wilkins, iii. 748.]

February 20. (Session 87.) The Bishop of London, as president, treated about a constitution in the case of correction *ex officio*, the thing that then lay before the Commons in Parliament.—Wake, p. 475.

February 23. (Session 83.) Adjournment.

February 28. (Session 89.) (Wednesday.) Discussion on the constitutions.

March 2. (Session 90.) Discussion on the constitutions.

[February 24. Archbishop Warham protests against all enactments made against the Pope's authority, or the ecclesiastical prerogatives of the Church of Canterbury; at Lambeth.—Wilkins, Conc, iii. 746.]

[A petition purporting to be an "address from the Convocation to the King for an Act to take away annates exacted by the "Court of Rome."—Wilkins, Concilia, iii. 760; Strype, Memorials, i. app. p. 107.]

March 4. (Session 91.) The Lower House petitions that persons presented to ecclesiastical benefices may not be compelled by the diocesans, by any obligatory writing or temporal punishment, to keep residence.—Atterbury, Rights, &c., p. 21; Wake, p. 475.

The same day the Lower House prayed that the constitutions now prepared might be published.—Wake, p. 475.

March 5. (Session 92.) The prolocutor and clergy pray the Upper House that persons presented to ecclesiastical benefices may not be compelled by the diocesans, by any obligatory writing or under temporal penalty, to keep residence.

March 8. (Session 93.) Discussion on reforms.

March 11. (Session 93.) Hugh Latimer, having been thrice ordered to sign certain articles, refuses, and is ordered to remain in safe custody at Lambeth as contumacious.—Cf. Letters, &c., 860, for articles.

March 15. (Session 94.) Bill presented by the Bishop of Hereford against the residentiaries of that Church. Articles against Latimer.

March 18. (Session 95.) Adjournment.

March 21. (Session 96.) The Bishop of London presiding; Latimer apologizes and asks to be absolved. He is admonished to appear on the 15th of April.

## PROCEEDINGS OF PARLIAMENT.

23 *Hen. VIII. c. 19.*—An Act concerning the King's gracious pardon of *præmunire* granted unto his spiritual subjects of the province of York.

23 *Hen. VIII. c. 20.*—An Act concerning restraint of payment of annates to the see of Rome.]

Letters, &c., 721. Petition of the Commons in Parliament to the King requesting him to command the Lords Spiritual to give a true and plain declaration of the laws of God and Holy Church upon the following articles:—1. Whether spiritual persons may buy and sell for gain; 2, hold temporal possessions; 3, act as steward, bailiff, surveyor, &c.; 4, hold more than one benefice with cure of souls; 5, be non-resident from a benefice with cure of souls; 6, or having such a benefice, be stipendiaries, chantry priests, or take annual service.

March 18. [Letters, &c., 1016.] *The complaint of the Commons against the Clergy.*—By the diffusion of heretical books, and by the severity of the ordinaries, discord has arisen between spiritual and temporal persons. For the reformation of which the Commons lay before the King the following gravamina:—

1. Canons made in Convocation without Royal assent, or lay assent, in derogation of Royal authority.
2. The limitation of the number of proctors in the Courts of Arches and audience.
3. Troublesome proceedings in matters of discipline.
4. Heavy fees of ecclesiastical courts.
5. Fees enacted by the clergy for sacraments and sacramentals.
6. The trouble and expense of testamentary proceedings.
7. Exactions on institution and induction.
8. Misuse of patronage.



## NOTES FROM FOREIGN CORRESPONDENCE.

that the question has been discussed in Parliament, whether the King should have all the goods of Lords who die, even when they leave a son of full age. He does not know whether this will be so, but thinks that the King demands it in addition to a money aid for the defence of the Scottish border. He thinks that the aid will be granted, as the deputies are chosen by the King's will, but there will be difficulties in collecting the money.

February 3. [Letters, &c., V.n. 773.]

February 14. [Letters, &c., V.n. 805.] The King has been trying to obtain in Parliament the third part of the feudal property of deceased persons, but he has not succeeded, and the demand has been the occasion of strange words against the King and Council. Nothing has been concluded except a prohibition to import new wine till Candlemas. There was some talk of prohibiting silk, but it has not passed. The principal point has not been touched on in public yet. Norfolk and Wiltshire are trying to suborn the Archbishop of Canterbury, whom they consider the Pope of England. They could not shake him; and it seems that, as they despair of gaining their end in an ecclesiastical way, they will take some other road. Lately Norfolk assembled a number of persons and told them how badly the Pope had treated the King by not remitting the divorce cause to be decided at home, according to the privileges of the kingdom; and even without these privileges, it ought to be decided here, as certain doctors say that matrimonial causes belong to the temporal jurisdiction, not to the spiritual, and that jurisdiction belongs to the King, who is emperor in his kingdom, and not to the Pope. He then asked them for advice and help. Lord Darcy answered that his goods and person were at the King's disposal, but he had heard and read that matrimonial causes were spiritual and under ecclesiastical jurisdiction, and that the King and Council knew what had to be done without involving others. Most of the others agreed; the Duke was not pleased.

February 28. [Letters, &c., V.n. 831.] *The Duke of Norfolk to the King's ambassador at Rome.*—Notwithstanding the infinite clamours of the temporality in Parliament against the misuse of the spiritual jurisdiction, the King will stop all evil effects if the Pope does not handle him unkindly. This realm did never grudge the tenth part against the abuses of the Church at no Parliament in my days as they do now. He hopes to finish Parliament before Easter.

February 28. [Letters, &c., V.n. 832.] *Chapuy to the Emperor.*—Since writing last the King has proposed to Parliament to withdraw the annates paid to the Pope for vacant benefices and have them paid to him as sovereign of the ecclesiastics in his kingdom, also to abolish the papal right of collection. The prelates would not consent. The King sent to tell the nuncio that these measures were not taken by his consent, but were moved by the people who hated the Pope marvelously.

March 6. [Letters, &c., V.n. 850.] *Chapuy to Charles V.*—The Parliament is discussing the abolition of the authority of archbishops over bishops and the transfer thereof to the King. The Earl of Wiltshire is one of the principal supporters of the proposal, and has ventured to say that he would maintain with his body and goods that no pope nor prelate had power to exercise jurisdiction or make any law or constitution. No surprise need be felt at this, for he and his daughter are considered as true apostles of the new sect.

March 13. [Venetian Dispatches, 752.] The Bishop of Winchester stated in Parliament that the Pope can do nothing further; so they are indignant with his Holiness.

March 20. [Letters, &c., V.n. 879.] *Chapuy to Charles V.*—The King has been at the Parliament three times lately, and has played his part so that the Bill about the annates has been passed. All the bishops and two abbots opposed it. The Lords, who were about thirty, all consented, except the Earl of Arundel, so that the majority was for the King. The matter was decided yesterday. The Queen's matter has not been mentioned in Parliament. Nothing else of importance has been settled, but on Saturday their intention will be known, as then the States will be prorogued till after St. George's Day.

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*Hall's Chronicle*, p. 785.—The King, owing to the abuse of feofments to uses, lost his feudal profits, wardships, primer seisin, &c. He therefore caused a Bill to be drawn in which it was provided that every man, if he left half his land to the heir by descent, might dispose of the other half by will; this would secure the King's feudal rights on one half. When this Bill was brought into the Commons it excited great indignation; the wiser men would have passed it; the King would have been content if a third or fourth part had been secured to the heir; but the House would neither pass the Bill nor amend it. The King then had the matter disputed in the Chancery, and it was agreed that land could not be willed by the order of the Common Law. [This led to the passing of the Statute of Uses, 27 Hen. VIII. c. 10, and the Statute of Wills, 32 Hen. VIII. c. 1.]

*Hall's Chronicle*, page 784.—March 18. The Common Speaker, accompanied with divers knights and burgesses of the Common House, came to the King's presence and there declared to him the grievances of the Commons; humbly beseeching the King to find a remedy, and further to dissolve the Parliament. The King replied at length, that it was inconsistent to ask for reformation of abuses and a dissolution at the same time; the Commons must be patient, and not contend



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## PROCEEDINGS IN CONVOCATION.

## PROCEEDINGS OF PARLIAMENT.

9. Number of holy days.

10. Proceedings ex officio; accusation and imprisonment.

11. No chance of recovering damages for false charges.

12. Subtle examinations on heresy by which men are beguiled into error and heretical statements.

March. Parliament is adjourned to April 10, on the 18th, or more probably on Saturday, the 23rd of March.—See the Dispatch of March 20.

April 12. (Session 97.) The Archbishop communicated the petition of the Commons on ecclesiastical grievances, to which he thought it expedient that answers should be given. He handed the complaint to the prolocutor to be read, and answer to be made at the next sitting.

April 15. (Session 98.) The petition of the Commons was read in the Upper House by the Bishop of Winchester. Answers to two points of the first article were read, accepted by vote, and sent down to the Lower House. Hugh Latimer was summoned to answer on the subject of a letter written to Mr. Greenwood, and admonished to appear in person on the 19th of April.

April 19. (Session 99.) Latimer declares that he has appealed to the King, and intends to stand by that appeal. The answers of the Lower House to the Bill of the Commons were read before the Archbishop. They were then read before the prolocutor. The Archbishop next asked whether the House consented, and it was agreed. The Archbishop then proposed that the answers should be written out fair, that they might be speedily presented to the King.

April 22. (Session 100.) The Bishop of Winchester announced that the King's pleasure was to remit Latimer's appeal to the Archbishop and the Convocation. Latimer then submitted, and was absolved and restored.

April 24. (Session 101.) A communication on the answers of the Lower House.

April 29. (Session 102.) Deliberation on the answer with the Bishops and the prolocutor.

May 3. (Session 103.) Continued debate on the answers.

May 6. (Session 104.) The Bishop of London reported the wish of the Archbishop on the answers, and directed the prolocutor that the answers of the Lower House should be put in writing.

May 8. (Session 105.) The Bishop of London, as commissary, received four Bills from the prolocutor, on the authority of ecclesiastics for legislating for the suppression of heresy, devised,

[April 30.] The answer of the spirituality laid before the Commons. This answer, of which different editions are to be found in Wilkins, Atterbury, &c., treats the complaints of the Commons in order, denying the existence of the discord alleged by them, explaining the relations of the ecclesiastical and temporal



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March 20. [Venetian Dispatches, 753.] Parliament is to meet on the 15th of April, and they have determined not to send the Pope any more annates for bishoprics or any other Church benefices. But, although this resolve proceeds from the King's will, he has not yet notified it, and they have written to the Pope. Should it be carried into effect it will double the King's revenue, and by translating a bishop from one see to another and filling up the vacancy, when one see falls in, he will obtain the annates of many. He would fain also be declared heir to one third of all property held by feudal tenure, the greater part of the island being thus possessed. This resolve is said to have passed the Chamber of the Privy Council, but as yet the rest of the Parliament will not assent to it.

March 21. [Venetian Dispatches, 754.] On the 15th instant the Parliament met to discuss the divorce, and the Archbishop of Canterbury spoke much against the King, who was very angry and used foul language to him.

March 26. [Letters, &c., V.n. 898.] *Chapuy's to Charles V.*—After the Bill of the Annates was passed in the House of Lords, the proctors and deputies of towns and communes refused it, though most of them were chosen by the King's pleasure, and he gave them to understand that in Spain and other places annates were not paid, and they had amounted in 50 years to two millions of gold. He promised also not to take any new measures against the Pope for a year, and meanwhile would treat with him. Seeing that these remonstrances were fruitless, he caused the House to divide, and some passed to his side for fear of his indignation, so that the article was agreed to, but rather more moderately than it was proposed. In a year the Pope will only take as annates a 20th part [or 20 per cent; Spanish Disp. n. 926.] of what he formerly had, and if the Pope refuses, the two Archbishops will have the power of conferring dignities and of consecrating, or in their stead two Bishops appointed by the King. The Duke of Norfolk has explained to the nuncio that these measures were urged by the people, and that they had formerly proposed other measures against the Pope, but the King had defended the rights and authority of his Holiness; as to the annates, it was in the King's power to do as he pleased in the name of the people.

April 13. [Venetian Dispatches, 760.] The Parliament meets daily.

April 16. [Letters, &c., V.n. 941.] The Estates have met again. To-day the Lord Chancellor, the Duke of Norfolk, and other Lords went to the House of Commons to show the need of making a harbour at Dover and fortifying the Scottish border, which is as much as to say that a tax must be imposed. It is said that the King wishes for a tenth from the clergy and a fifteenth from the laity; and it is believed that it will be granted, as the deputies are chosen for this purpose. Many think that the exaction of the tax will cause a mutiny.

May 2. [Letters, &c., V.n. 989.] The King is again soliciting the Estates for an aid for the fortification of the Scottish frontier. Two *hommes de bien* dared to say openly that the fortification was needless, as the Scots could do no harm without foreign aid, and that the best fortification was to maintain justice in the kingdom and friendship with the Emperor; to this end the Estates

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with the clergy, much less with the King himself. He had sent them a Bill on primer seisin which the Lords had passed; if the Commons would not behave reasonably in that matter, the King would search out the extremity of the law and would not offer so much again. With this answer, the Speaker and his company departed.

*Hall's Chronicle*, page 785.—The King asked for a subsidy for fortification. The Chancellor, Duke of Norfolk, and several other Lords went to the House of Commons and stated the King's proposals. "Wherefore, considering the King's good intent," he said, "that the Lords thought it convenient to grant unto the King some reasonable aid toward his charges, and prayed the Commons to consult on the same." And then he and all the Lords departed. After their departure the Commons, considering the King's good intent, lovingly granted him a fifteenth towards his charges; but this grant was not enacted at this session.

*Hall's Chronicle*, page 788.—On the 30th April the King sent for Audley and others of the Commons, and told them that three days ago he had received the answer of the spirituality, which he delivered to the Speaker, "saying, we think their answer will smally please you, for it seemeth to us very slender; you be a great sort of wise men. I doubt not but you will look circumspectly on the matter, and we will be indifferent between you." He then explained to the Speaker his scruples of conscience about his marriage. These utterances the Speaker reported to the House; "which slight answer displeased the Commons."

*Hall's Chronicle*, page 788.—The occasion why the King spake of his marriage was that because one Temes [burgess for Westbury] in the Common House moved



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as he said, by learned men; and he protested that he did not exhibit those Bills as approved by the unanimous consent of the whole House, but that the Bishop, as representing the Archbishop, and the other bishops might read them and choose from them the parts which would most make for truth and the purpose.

The Bishop of London, having been informed by the Duke of Norfolk that the House of Commons had granted the King a fifteenth, payable in two years, admonished the prolocutor and the rest to be not less ready to furnish aid; and, after they had consulted, to return with their answer. On their return the representatives of the Lower House prayed that the Bishops of London and Lincoln, the Abbots of Westminster and Burton, Sampson, the Dean of the Chapel Royal, and Fox, the King's almoner, might go to the King and pray him to assist and favour the clergy and preserve their immunities unimpaired, not less than he himself hitherto and his most illustrious progenitors before him had done. The bishops and others named, having received instructions on the grant of aid, then went to the palace.

May 10. (Session 106.) Edward Fox, the King's almoner, exhibited the following articles, sent to the Synod, which the King willed that all should subscribe:—

1. That no constitution or ordinance shall be hereafter by the clergy enacted, promulged, or put in execution, unless the King's Highness do approve the same by his high authority and Royal assent, and his advice and favour be also interposed for the execution of every such constitution among His Highness' subjects.

2. That whereas divers of the constitutions provincial, which have been heretofore enacted, be thought not only much prejudicial to the King's prerogative, but also much onerous to His Highness' subjects, it be committed to the examination and judgment of thirty-two persons, whereof sixteen to be of the Upper and Nether House of the temporality, and other sixteen of the clergy, all to be appointed by the King's Highness; so that finally, whichever of the said constitutions shall be thought and determined by the most part of the said thirty-two persons worthy to be abrogated and annulled, and the same to be afterward taken away and to be of no force and strength.

3. That all other of the said constitutions which stand with God's laws and the King's, to stand in full strength and power, the King's Highness' Royal assent given to the same.

These articles were read first in St. Katharine's Chapel, and then in St. Dunstan's Chapel by the Archbishop and prelates, and it was then agreed that some members, the Bishops of Lincoln and Bath, the Abbot of St. Bennet, Mr. Edward Fox, Mr. Powel, Mr. Wilson, and Mr. Duck, of both Houses of Convocation, should visit the Bishop of Rochester to treat early of the contents, and to report the next day.

May 13. (Session 107.) The Archbishop commissioned Thomas Parker, vicar-general of the Bishop of Worcester, to disinter the body of William Tracy.

The articles presented on May 10 were then examined, and with some limitation agreed upon,

May 15. (Session 108.) The Archbishop produced the King's writ for proroguing Convocation to November 5. That done, the Duke of Norfolk, the Marquess of Exeter, the Earl of Oxford, the Lord Sands, Lord Boleyn, and Lord Rochford entered and consulted privately with the Upper House for an hour. They then left, and the prolocutor attended with a report of the votes of the Lower House; on the first article, there were eighteen noes and eight abstainers; on the other two nineteen noes and seven abstainers. After another visit from the King's ministers, during the dinner hour; after dinner the Upper House voted. In the Upper House three bishops gave conditional assents: the Bishop of St. Asaph, provided that the King should allow the provincial constitutions which are not contrary to divine law nor to the law of the realm to be executed as before; the Bishop of Lincoln, "provided that the King should permit the constitutions otherwise made to be executed by the ordinaries until the subject has received the examination contemplated;" the Bishop of London, "provided that the schedule be not against the law divine nor contrary to the general Councils." The Bishop of Bath and Wells voted downright against the articles. The articles were therefore passed; and the writ of prorogation was read.

May 16. The Articles of Submission were presented to the King.

November 5. Prorogued to February 5, 1533, [Letters, &c., 1519,] by the Bishop of St. Asaph, commissary of the Prior and Chapter of Canterbury; at Westminster. The prorogation was ordered by a writ addressed to the Prior and Convent, October 28.—Wake, *State of the Church*, p. 477.

## PROCEEDINGS OF PARLIAMENT.

laws, asking for distinct charges instead of general imputations, and expressing a willingness to reform any abuses on which the King will signify his mind to them. Further legislation against heresy appears to them to be unnecessary. Some minor matters are treated circumstantially.

(April 30. 24 *Hen. VIII.* Writ summoning the Abbot of Burton to Parliament.—Rot. Parl. i., app. cccxxxix.

[Petition of the Clergy of the Province of Canterbury to the King.—Letters, &c., 1017. (1.) That the Church may enjoy her privileges. (2.) That the limits of *præmunire* may be defined in Parliament. (3.) That as the clergy are much impoverished by recent Acts annulling the liberty of the Church "*et sanctiones canonicas*," to the peril of the souls of those who made the Acts, in the framing of which they were not consulted, and as these statutes are so capricious that it is difficult not to violate them, that the same fathers whose business it is to declare the truth of the canons, may provide a remedy. (4.) That the King would have a statute in favour of faith and against heresy made in the present Parliament.

May 14. Parliament prorogued to November 4.

November 4. [Letters, &c., 1518] *Audley to Cromwell*.—Parliament prorogued November 4 to February 4. Present in the Upper House the Bishop of Carlisle, Lord Darcy, the Lord of St. John's, and the Abbot of Waltham.



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should petition the King to take back his wife, and treat her well, otherwise the kingdom would be ruined, as the Emperor could do them more harm than any other, and would not abandon the rights of his aunt; the discord which the cause was provoking would ruin the kingdom. These words were well taken by all present, except two or three, and nothing was concluded about the aid. The King was displeased, sent for the majority of the deputies, and made them a long speech in justification of his conduct in the divorce. He told them that it was a matter in which they ought not to interfere, and promised to support them against the Church, and to mitigate the rigours of the inquisition which they have here, and which is said to be more severe than in Spain. Those who have conducted the affair have spoken more plainly. The Estates have now granted a fifteenth, which only amounts to 28,000*l.* sterling; half to be paid on February 2, and the rest a year after. The King has again referred to Parliament the rights he wishes to have on inheritances, but Parliament will not agree to it.

May 4. [Venetian Dispatches, 765.] The Parliament is still sitting.

May 13. [Letters, &c., V.n. 1013.] Parliament is discussing the revocation of all synodal and other constitutions made by the English clergy, and the prohibition of holding synods without express licence from the King. This is a strange thing, Churchmen will be of less account than shoemakers, who have the power of assembling and making their own statutes. The King also wishes bishops not to have power to lay hands on persons accused of heresy, saying that it is not their duty to meddle with bodies (*personnes*), and that they are only doctors of the soul. The Chancellor and the bishops oppose him. He is very angry, especially with the Chancellor and the Bishop of Winchester, and is determined to carry the matter.

May 13. [Venetian Dispatches, 767.] Parliament adjourned last Friday, and will meet again in a fortnight. They have agreed, though the Act is not yet published, that all the inhabitants of the island, whatever their condition, are each to pay the King [a fifteenth] on the value of all their real and personal property, and henceforth on the death of any person, the King is to have one year's revenue of the deceased. With this money the country is to be fortified. The clergy are to be taxed 400,000 crowns, and their revenues to be diminished.

May [22. Letters, &c., V.n. 1046.] *Chapuis* to Charles V.—On Tuesday (May 14) the Estates were prorogued until November. The King was not present at the last meeting as usual, probably because there was nothing granted except the fifteenth offered by the laity. He neither refuses nor accepts it, waiting till the clergy offer him a tenth, which they would not grant neither would they revoke their constitution. The King is much displeased. . . . The Chancellor has resigned, seeing that his affairs were going on badly and likely to be worse, and that if he retained his office he would be obliged to act against his conscience or incur the King's displeasure, as he had already begun to do for refusing to take his part against the clergy.

May 31. [Letters, &c., V.n. 1058.] As the King saw that the clergy would not consent to the abolition of their constitutions, he has proposed that they should elect fifteen Churchmen, who, with the same number of laymen appointed by himself, should correct the episcopal and papal constitutions. He has intimated to them that he did not wish any of his subjects, clerical or not, to swear fealty to the Pope or to any other than himself. The prelates replied that if he would show them anything unreasonable in their constitutions they would amend it without the interference of laymen, that their oath was legal and not derogatory to the Royal authority. The King was not satisfied with this, and remained obstinate.

November 10. [Letters, &c., V.n. 1531.] Parliament, which was to have met on the 4th, is prorogued to February 4.—See also Venetian Dispatches, No. 823.

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

the Commons to sue to the King to take the Queen again into his company, and declared certain great mischiefs as in bastardizing the Lady Mary, the King's only child, and divers other inconveniences, which words were reported to the King, which was the cause that he declared his conscience.

*Hall's Chronicle*, page 788.—On the 11th of May the King sent for the Speaker and twelve of the Commons, and showed them the oath taken by the prelates at their consecration to the Pope as well as the oath taken to the King. The Speaker caused both oaths to be read in the House of Commons. "The opening of these oaths was one of the occasions why the Pope within two years following lost all his jurisdiction in England."

The 14th day the Parliament was prorogued till the 4th day of February next ensuing.



1533.

## PROCEEDINGS IN CONVOCATION.

1533. February 5. (Session 1.) Convocation of Canterbury at Westminster. John Fulwell, monk of Westminster, makes the usual protest, and the Bishop of London the usual answer touching the immunities of the Abbey.

February 11. (Session 2.)	{	Three discussions on the relief of the two Universities, the Carthusians, the House of Sion, and the Sisters of St. Clare, from the payment of the subsidy.
February 15. (Session 3.)		
February 20. (Session 4.)		

February 27. (Session 5.) Agreed to exonerate the above-mentioned houses.

March 1. (Session 6.) Discussion on the incidence of the subsidy.

March 8. (Session 7.) Adjournment.

March 14. (Session 8.) Convocation prorogued to March 17 at St. Paul's, by a writ issued by the Prior and Convent of Canterbury, February 10, 1533.—(Wake, *State of the Church*, App. p. 220.)

March 17. (Session 9.) St. Paul's: writ of the Prior and Convent for the summoning of Convocation, &c. read.

March 21. (Session 10.) "Nihil scitu dignum."

## PROCEEDINGS OF PARLIAMENT.

1533. February 4.—Parliament, Rot. Parl. i. app. cccxxxix.

Humfrey Wingfield, burgess for Yarmouth, elected Speaker in the place of Audley, now Chancellor.

[Ecclesiastical Acts of 24 *Hen. VIII.* :—

*Cap. 12.*—An Act that the appeals in such cases as have been used to be pursued to the see of Rome shall not be from henceforth had nor used but within this realm.

*Cap. 13.*—An Act for reformation of excess in apparel, § 2, Apparel of the Clergy.]

March 26. (Session 11.) Confession, submission, and subscription of Hugh Latimer: ordered that a copy of this submission should be sent into the districts where Hugh Latimer had preached or was likely to do so.

The president (Bishop of London) laid before the Convocation the King's pleasure touching the determination of the question between himself and the Queen; presenting certain books containing depositions of witnesses, the marriage treaty, and other instruments for their information. He also read the opinions of divers universities abroad. The question was then discussed whether it was lawful to dispute on a point still in suspense before the Pope; in answer to which the president produced an instrument formed on the transumpt of an apostolic brief, in which the Pope stated his will that everyone should freely and with impunity declare his mind and opinion in the said cause. Thereupon the president requested the bishops and other prelates, as well as the clergy then present, both theologians and canonists, to make a careful inspection of the documents, and to report their opinions thereon with all convenient speed.

March 28. (Session 12.) The Bishop of London produced the originals of the opinions of six universities. After a long discussion he proposed that the prelates should give their opinions in the form drawn up by the theological faculty of Paris. Some of the prelates asked for more time for consideration; and the sitting was adjourned to 4 o'clock p.m. The president then put the question, Are marriages with the relicts of brothers dying without children so forbidden alike by natural and divine law that the supreme pontiff cannot dispense on such marriages contracted or to be contracted.

Three Bishops, London, St. Asaph, and Lincoln, answered that their opinions agreed with the determination of the universities, and with them 36 abbots and priors.



## NOTES FROM FOREIGN CORRESPONDENCE.

1533. January 27. [Letters, &c., VI. 89.] In spite of the order in the last Parliament that only a tenth of the annates should go to Rome, the King has ordered the entire payment as usual. Some think that there is collusion between the King and the Pope. The King thinks that he has nearly gained the Pope.

1533. January 24. [Venetian Dispatches, 846.] It is said that Philip Melanchthon and other Germans will come over to this Parliament. Many abbots and prelates besides the usual members have been summoned.

February 10. [Venetian Dispatches, 850.] Parliament met on the 4th, and they are now endeavouring to raise a large sum for war against Scotland. . . . Parliament will discuss the means of raising revenue to maintain 1,000 men-at-arms in the French fashion; the greater part will, it is said, be raised from Church lands.

February 9. [Letters, &c., VI. 142.] Yesterday the King sent for the nuncio to take him to Parliament. . . . The King then went the second time to Parliament and sat on the throne, the nuncio being on his right hand, and the French Ambassador on his left. The Lords were in scarlet robes; the Commons, also in scarlet, presented a lawyer, the Speaker elect, whom the King knighted. Nothing else has been done.

February 15. [Letters, &c., VI. 160.] The King has sent for the nuncio to go to the House of Commons. He went on condition that nothing should be said in his presence against the Pope. They were discussing a measure against thieves, the law of sanctuary, &c.

February 23. [Letters, &c., VI. 180.] The King is trying to get the bishops to sign a very strange document. The Archbishop of York and the Bishop of Winchester have not yet done it. The elect of Canterbury has even solicited it. He has married the King to the lady. The King is waiting for Cranmer's bulls. He intends to raise a regiment of horse; the Church is to pay them. He has given the Chancellor the best house at Westminster and 1,000 ducats of rent out of the Abbey revenues.

February 23. [Venetian Dispatches, 858.] As yet the only momentous matter treated in Parliament has been that of raising money for the war with Scotland, to secure a good number of men-at-arms, and to repair ports and fortresses for the defence of the kingdom. On the arrival of the bulls for Canterbury the divorce business will be concluded.

March 15. [Venetian Dispatches, 864.] The writer has heard that a motion has been made in Parliament, that with the consent of the Lords Spiritual and Temporal the King may take to wife the Marchioness Anne. It was also purposed by one of London that the judges should be appointed in this Parliament, and that no application be made to Rome.

March 15. [Letters, &c., VI. 235.] Yesterday and to-day it was proposed in Parliament to make a statute declaring that the Pope had no authority in the kingdom. Many people think it strange. Every one thinks that it will go further, as the King is entirely set upon it. He has already made his preparations to have the measure carried through the house.

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

*Hall's Chronicle*, page 795.—“After Christmas Sir Thomas Awdeley, Lord Keeper of the Great Seal, was made Chancellor of England, and when the Parliament began, because the office of Speaker was void, Humfrey Wingfield, of Gray's Inn, was elected Speaker of the Parliament. . . . In the which Parliament was made an Act that no person should appeal for any cause out of this realm to the Court of Rome, but from commissary to the bishop, and from bishop to the archbishop, and from archbishop to the King, and all causes of the King to be tried in the Upper House of the Convocation.”



1533.

## PROCEEDINGS IN CONVOCATION.

## PROCEEDINGS OF PARLIAMENT.

March 29. (Session 13.) After another discussion of the same question, six abbots replied that they agreed with the determination, with the addition, "*Si dicta relicta prius erat carnaliter cognita a fratre mortuo.*"

[Cranmer was consecrated Archbishop, March 30th.]

March 31. (Session 14.) The Convocation was adjourned by commission of the Archbishop to the Bishops of London, Winchester, and Lincoln, to April 1.

April 1. (Session 1.) The Archbishop appeared in the Chapter House and had divers communications concerning the business of the Convocation.

April 2. (Session 2.) The Archbishop called together the Lower House to hear their opinions on the question: *an ducere liceret uxorem cognitam a fratre decedente sine prole, et an sit prohibitio juris divini indispensabilis a papa?* The votes of the theologians were, affirmative, 14; negative, 7; doubtful, 1; and one affirmed that the case was one of divine and moral law, but dispensable.

April 3. (Session 3.) The prolocutor with the clergy exhibited, to the Bishop of London, the opinions of the canonists, on the question whether the marriage of Arthur and Catharine was proved to have been consummated. The opinions were unanimous in the affirmative, saving certain protestations to be exhibited to the Archbishop in the Upper House. This day the prolocutor, Wolman, being sick, appointed Fox, Archdeacon of Leicester, and Bell, Archdeacon of Gloucester, with consent of the Upper House, to act in his place.

April 4. (Session 4.) The Bishops of Winchester and Exeter agreed with the conclusion of the canonists; the Bishop of Bath and Wells dissented.

April 5. (Session 5.) The Archbishop, and the acting prolocutor, Fox, had communications touching account to be rendered of the subsidy. After this John Tregunwell, LL.D., a counsellor of the King, appeared and alleged on behalf of the King and Lords, that certain questions concerning the King and the relief of his conscience had been proposed in this Convocation, that the opinions of the prelates and clergy in this Convocation might be had thereon; the King had heard that these opinions had been declared on the acts of the Convocation, and he asked that an instrument should be drawn up containing the conclusions. This was done.

The instrument rehearses that in the Chapter House of St. Paul's, on the 5th of April, this demand was made, and the Archbishop ordered the notaries to draw up the instrument. The two points to be decided had been assigned to the members of the faculties of theology and canon law respectively.

As to the first question, answer was given in the affirmative, by—

Present	-	-	-	-	66
Proxies	-	-	-	-	197

with the exception of 19.

As to the second question, answer was given in the affirmative,—

Present	-	-	-	-	44
Proxies	-	-	-	-	3

with five or six exceptions.

In a list of the names of voters the numbers appear altogether 319: for the King, 294, and against him, 25.

Of the bishops theologians, four present and five by proxy, voted affirmatively, two negatively, on the first point.

Of the bishops canonists, three present and three by proxy, voted affirmatively, and one negatively, on the second.

The names are printed in full in Pocock's Records of the Reformation ii. 449-459.



## NOTES FROM FOREIGN CORRESPONDENCE.

March 29-30. [Venetian Dispatches, 867.] In the Parliament of the Ecclesiastics (Convocation), they are attending daily with the utmost diligence to the affair of the divorce, and to deprive the Pope of his appeal and authority in this kingdom. It is supposed that they will settle this, and, should the Pope not assent to the divorce, they will withdraw their obedience. . . . To-morrow the Archbishop will be consecrated, and on the Sunday of the Apostles (April 20) the Parliament will meet again, and settle the matter in a few days.

March 31. [Letters, &c. VI. 296.] The King has been waiting for the bulls of Cranmer's appointment. They came five days ago. He has been very urgent with the Synod, so that those present could scarcely eat or drink, and using such terms to them that no one dared open his mouth to contradict except the Bishop of Rochester. His single voice cannot avail against the majority.

The Commons have refused to assent to the King's demands against the Pope, and have even strongly resisted them, alleging several reasons; especially that, if the Pope induced Christian princes to regard England as schismatic, and would only interrupt their traffic in wool, it would create a rebellion and civil war. Those on the other side say that there would be no such danger, as other princes would follow the example. The nuncio has complained of the threats against the Pope.

April 2. [Venetian Dispatches, 869.] The Archbishop has been consecrated, and the Parliament of Ecclesiastics has assembled daily. With regard to the divorce there is now no longer any difficulty; they will assent to what the King wishes, and are discussing the abrogation of the Pope's power. Yesterday was a debate. It is supposed they will deprive the Pope of all authority.

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

*Hall's Chronicle*, page 795.—“You have heard the last year how the Parliament had enacted that no person should, after a day, appeal to Rome for any cause, whatsoever it were; and that the Queen, now called the Princess Dowager, had appealed to the Court of Rome before the Act made, so that it was doubted whether that appeal were good or not. This question was well handled in the Parliament House, but much better in the Convocation House; but in both Houses it was alleged, yea and by books showed . . . that a cause rising in one province should be determined in the same . . . which things were so clearly opened . . . that every man that had wit, and was determined to follow the truth . . . might plainly see that all appeals made to Rome were clearly void and of none effect.”

[March 30. Consecration of Cranmer as Archbishop of Canterbury.]



1533.

## PROCEEDINGS IN CONVOCATION.

## PROCEEDINGS OF PARLIAMENT.

April 7. (Session 6.) Adjournment.

April 8. (Session 7.) A writ was exhibited proroguing the Convocation to the 7th of June. The prolocutor and clergy then entered the Chapter House and asked for accounts to be made, which at the Archbishop's order was done by the Bishop of Lincoln.

May 13. *Convocation of York*.—Reply on the two questions:—

1. Theologians, present 27, proxies, 24; all but two agreed.

2. Canonists, present 44, proxies 5 or 6; all but two agreed.

The notarial certificate, or "instrumentum publicum," is printed in Wilkins, Conc. iii. 765, with the Archbishop's letter in answer to a letter of the King, dated at Greenwich, July 10.

June 7. *Convocation of Canterbury*.—Prorogued to November 4.

November 4. *Convocation of Canterbury*.—Prorogued to January 16 (30).



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

April 10. [Letters, &c., VI. 324.] Notwithstanding the remonstrances of the estates, they have done the very contrary as much as they could. The King would have constrained them to conclude and pass all that he had put forward against the Pope's authority, viz., to declare that all processes, even in the case of marriage, ought to be settled in this kingdom without recourse to the Pope under pain of high treason, and that if anyone in such a case bring in excommunication into this kingdom, he shall be declared a traitor and without any further process be put to death.

Last Sunday the Bishop of Rochester was imprisoned. The King gave out in Parliament that it was because he had insinuated that Rochford had gone to France to obtain by bribery a favourable sentence from the Pope.

April 12. [Venetian Dispatches, 870.] On the Monday in Passion week Parliament [and Convocation?] assembled. They decided that the marriage of Katharine to the King is null, and that he may marry; and they have abolished appeal to the Pope. . . . They have also abrogated the dispensation for holding a plurality of benefices with cure of souls, and for non-age and other things. They have prohibited obedience to papal monitions and interdicts. Bishop Fisher was arrested on Palm Sunday for opposing these measures.

Parliament has been prorogued until Whitsuntide, June 6.

April 15. [Letters, &c., VI. 351.] The writer had heard what was going on in Convocation as well as in Parliament against the Queen, and had remonstrated with the King, who got into a rage. The King has sent to intimate to the Pope that what has been done in Parliament has been done at the solicitation of the people and not at his, and that, on his ratifying the marriage, he will revoke all.

April 27. [Venetian Dispatches, 878.] To-morrow some doctors depart for York, where, as there is another English archiepiscopal see, they will hold a certain conference and promulgate some decrees in conformity with what was done in Parliament and in the Convocation of the ecclesiastics.

May 10. [Letters, &c., VI. 465.] The Statute of Appeals has prevented the Queen from raising any objection to Cranmer's jurisdiction. The writer attempts to interfere in the trial of the divorce, and gives his arguments before the Council.

June 16. [Letters, &c., VI. 653.] The synod of the province of York has lately been assembled by order of the King to decide in favour of the divorce. The Bishop of Durham has manfully opposed the Bishop of London. Were it not that the King cannot find another man who could govern the border, the Bishop of Durham would have been put in prison. The Bishop of Rochester has been set at liberty within the last three days, at Cromwell's request.

July 5. [Venetian Dispatches, 933.] Henry's proclamation that, as his separation from Katharine and his marriage with Anne had been formally conducted "by the common consent of the Lords Spiritual and Temporal, and of the Commons of the realm, and by authority of the Parliament, as in like manner by the assent and determination of the whole clergy in its constant convocations held and celebrated in both the provinces of this kingdom," his loyal subjects are warned not to incur the penalty of *præmunire* by impugning the second marriage.

[The proclamation is printed in Pocock's Records of the Reformation, ii. 502.]

October 10. [Letters, &c., VI. 1249.] Parliament will assemble on the 4th proximo. The Queen anticipates harsh measures, and asks for some one to remonstrate. The King wants to get money from the Parliament, as usual, on the birth of a prince or princess.

October 16. [Letters, &c., VI. 1296.] Parliament has been put off to January 15.

[April 11. Cranmer cites the King to put away his wife Katharine.]

[May 10. Cranmer opens his court at Dunstable.]

[May 23. Cranmer gives sentence against the marriage of Henry and Katharine.]

[June 1. Coronation of Anne Boleyn.]

[June 29. The King appeals from the Pope to a future general Council.]

[July 9. The King's Letters Patent confirming the legislation on Aunates.—Rot. Parl. i. p. ccxxxvii.]

[July 11. The Pope's sentence annulling the marriage with Anne Boleyn.]



1534.

## PROCEEDINGS IN CONVOCATION.

*Convocation of Canterbury.*—January 16.

[The date given in Wilkins, iii. 757, is January 30, but it is given by Wake as January 16: State of the Church, page 479; and it is clear from the Journals of the Lords that Convocation sat from the first day of the Parliaments at least once a week.]

January 20. Convocation.

January 23. Convocation.

January 30. Convocation; adjourned to February 6.

The adjournments only are given in Archbishop Wake's copy of the extracts from the Convocation books; they agree with the adjournments of the Lords for the Convocations, as given in the second column from the Journals of the House of Lords.

February 6. Convocation; adjourned to February 13.

## PROCEEDINGS OF PARLIAMENT.

*Journal of the Lords.*—January 15. (1.) Owing to the small attendance of the Lords, and as the Lords Spiritual were engaged on the morrow in Convocation, the Chancellor adjourned the House to the Saturday following.

January 16. (2.) Convocation.

January 17. (3.) This day it was determined that the Lords Spiritual should meet in Convocation on the Tuesday and Friday in the ensuing week, and after that on Fridays only, until further order. The judges ordered to frame two Bills, one on sanctuary, and one on serious crimes, 25 Hen. VIII. c. 6.

January 18. (4.) Sunday.

January 19. (5.) No ecclesiastical business.

January 20. (6.) Convocation.

January 21. (7.) No ecclesiastical business.

January 22. (8.) " "

January 23. Convocation.

January 24. (9.) No ecclesiastical business.

January 25. Sunday.

January 26. (11.) No ecclesiastical business.

January 27. (12.) " "

January 28. (13.) " "

January 29. (14.) Star Chamber.

January 30. (15.) Convocation.

January 31. (16.) No ecclesiastical business.

February 1. (17.) Sunday.

February 2. (18.) No sitting. Feast of the Purification.

February 3. (19.) On account of the thin attendance the House adjourned. No Bishops were present.

February 4. (20.) No business.

February 5. (21.) Star Chamber.

February 6. (22.) Convocation.

February 7. (23.) Four Bills brought up from the Commons: (1) one "Concerning the consecration of Bishops within this realm," i.e. 25 Hen. VIII. c. 20.; called henceforth the Consecration Bill; which contains the final legislation on annates, confirming statute 23 Hen. VIII. c. 20.; and the operation of the letters patent of July 9, 1533. This Bill was read once. (3) and (4) are the Bill and answers to articles in a complaint made by Thomas Phillips against the Bishop of London, on the ground of a long imprisonment on suspicion of heresy.

February 8. (24.) Sunday.

February 9. (25.) The Bills concerning Phillips' complaint against the Bishop of London was read once: the Lords conceived that it does not pertain to this illustrious senate or council to consult on such frivolous matters, and it was ordered that they should be taken back to the Commons.



## NOTES FROM FOREIGN CORRESPONDENCE.

January 3. [*Letters, &c.* VII. n. 14.] Pamphlets on the papal power are being printed, especially the *Defensor Pacis* and another concerning priestly and royal authority. Bishops are said to be equal only to other priests, except in regard to precedence; kings to be sovereign and to have administration of temporal goods. The King will try to realise this state of things. It has been proposed to give the Archbishop of Canterbury the seal of the Chancery, and to pass bulls and dispensations under it. The King's publications have only irritated the people.

January 17. [*Letters, &c.* VII. n. 82.] The Estates met the day before yesterday. Nothing of importance has yet been done. Before proceeding against the Pope and Queen, and in order to obtain money, it is necessary to gain over the chief members. The King and lady are doing all they can to win over those who would be likely to oppose him.

January 28. [*Letters, &c.* VII. n. 114.] The King would have been glad to get the peace with Scotland concluded during the session of Parliament so that he might get the Estates to ordain that the succession should go to the King of Scots in default of issue by Anne. . . . Whatever arrangements on such a point the Estates might make, they would end in nothing.

The Estates are beginning to treat of affairs against the Pope. A book has just been published against the "Bishop of Rome," and others are in preparation. The clergy have been deprived of a revenue they received from the letting of houses. This has been done to please the people; but it is little compared with what the King means to do, which is to usurp part of the Church goods, and to distribute them to noblemen. Benefices will be given to laymen, as Cromwell told the Scottish ambassador.

January 29. [*Letters, &c.* VII. n. 121.] Many members of Parliament have intimated to me that if any one came from your Majesty (Charles V.) so as to give them an opportunity, they will stand firm, and hope to have a good following of the good Christians who are irritated at what has been done against the Pope. The King has taken trouble to have deputies at his will, and by countermanding those whom he thought likely to oppose him, as the Archbishop of York, the Bishops of Durham and Rochester, and Lord Darcy, will probably get what he wants by promises and threats. The assembly of nobles here has had no effect. I do not know why it has been held, except for the affair of the Queen and Princess.

February 4. [*Letters, &c.* VII. n. 152.] These people are constantly plotting and printing against the Holy See, as your Majesty has already seen. The latter tends to the entire destruction of the authority of the Holy See, and other evils such as the marriage of priests and giving benefices to laymen. The King tries this in order to gain over the nobility and make them support him in demolishing part of the benefices and taking the whole of their revenues, and taxing the temporalities of others. Still it would not matter much if it was only done to revile the Pope and authority of the See, for the people know that it is all meant out of spite, and do not put much faith in the statements. The worst is that the Court preachers inculcate all under the shadow of charity and devotion. All will be ruined unless an antidote be found before the poison is rooted.

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

*Hall's Chronicle*, page 808.—"After Christmas began the Parliament. In which Parliament, Elizabeth Barton, the holy maid of Kent, with all her adherents, . . . was attainted."

Page 814.—"In this Parliament also was made the Act of Succession for the surety of the Crown."

Page 814.—"The 30th of March the Parliament was prorogued, and there every lord and burgess and all other were sworn to the Act of Succession, and subscribed their hands to a parchment fixed to the same oath. This Parliament was prorogued till the 3rd day of November."



## 34.

## PROCEEDINGS IN CONVOCATION.

February 13. Convocation; adjourned to February 20.

February 20. Convocation; adjourned to February 25.

February 25. Convocation; adjourned to March 4.

March 4. Convocation; adjourned to March 11.

March 11. Convocation; adjourned to March 18.

## PROCEEDINGS OF PARLIAMENT.

February 10. (26.) No ecclesiastical business.

February 11. (27.) The Consecration Bill read a second time and handed to the Chancellor to be shown to the King.

February 12. (28.) No sitting. (Star Chamber?)

February 13. (29.) Convocation.

February 14. (30.) No ecclesiastical business; the House adjourned over to Thursday.

February 15. (31.) Sunday.

February 16. (32.)

February 17. (33.)

February 18. (34.)

February 19. (35.) No ecclesiastical business.

February 20. (36.) Convocation.

February 21. (37.) Bill for punishing the Nun of Kent (24 Hen. VIII. c. 12.) read once.

February 22. (38.) Sunday.

February 23. (39.) No ecclesiastical business.

February 24. (40.) " "

February 25. (41.) Convocation: "dominis spiritualibus in suo (sic) synodo versatis."

February 26. (42.) Bill for punishing the Maid of Kent read a second time.

February 27. (43.) The Consecration Bill of the Commons (see February 7, above), brought up and rejected; a new Bill on the same subject introduced and read once.

February 28. (44.) Record imperfect.

March 1. (45.) Sunday.

March 2. (46.) The Bishop of London reports that having the day before been required by certain members sent by the House of Commons, to answer Phillips' complaint. (see February 7), he had told them that the Bill being deemed frivolous by the Lords had been sent back to the Lower House, and that he has done nothing in the matter until he learns the opinion of the Lords. Whereupon all the Lords Spiritual (13) and Temporal (27) unanimously declared that it was not "consentaneum" for any Lord to answer any person in that place.

March 3. (47.) Consecration Bill read a second time.

March 4. (48.) Convocation; "dominis spiritualibus in sua convocatione occupatis."

March 5. (49.) Consecration Bill ordered to be put on parchment.

March 6. (50.) The Bill against the Nun of Kent read the third time; the King to be asked whether Sir T. More and others named in that Bill shall be summoned before the Lords in the Star Chamber.

March 7. (51.) No ecclesiastical business.

March 8. (52.) Sunday.

March 9. (53.) Consecration Bill read a third time and agreed to.

March 10. (54.) Two Bills agreed to by the Lords sent to the Commons.

March 11. (55.) Convocation.

March 12. (56.) Bill against the Nun of Kent read a fourth time, and agreed to.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

February 11. [*Letters, &c.* VII. n. 171.] The deputies of the Commons have passed an Act that the pope shall have no authority (*naye que veoir commander ne cognoystre*) in England; that the provisions of benefices be made here, and that when a bishopric is vacant the king shall nominate, the chapter elect or accept, and the Archbishop of Canterbury confirm . . . . This has not yet passed the Lords, but there will be no difficulty . . . . The King is very covetous of the goods of the Church, which he considers his patrimony.

February 26. [*Letters, &c.* VII. n. 232.] The King told the French ambassador that he did not intend to follow the Lutherans, nor to touch the sacraments, but only the vices and abuses of the Church; even if he wished to do more, it would cause such tumults from the sudden cessation of old customs. As the Queen's affair was before Parliament, and the removal of the Princess was to be discussed, the writer asked leave to go to the House. When the request was made the Dukes of Norfolk and Suffolk recommended that his intentions should be first made out, and what he meant to propose to the Parliament; and that he should be dissuaded. He visited Norfolk on St. Matthias's Day, and has had an interview with the King. He asked his leave to make a representation to Parliament. The King said it was not the custom; moreover, the ambassador's powers were too old, men's minds changed, and the Emperor's might have changed since the King's marriage, Chapuys argued strongly against Cranmer's sentence of divorce, touching on Mary's right to succeed. When he asked the King to explain the new statutes that affected the Spaniards, his Majesty was well pleased with the change of subject.

March 7. [*Letters, &c.* VII. n. 296.] Before I spoke to the King, one Chamber of Parliament had declared that, as the sentence of Cranmer had been passed, the Queen had lost her right to her title and lands. Since then the Bill, which had been already read twice or thrice in the other House, has, since I spoke to the King, passed the other House without much opposition. To oppose it would have been to oppose the second marriage, which would be a greater crime than heresy. The citizen members excused their opposition on the ground that, as they were bound to support the treaties between Henry and Ferdinand, they might be badly treated in the Emperor's dominions. In reply they were told that this obligation had been altered. The King exhibited to them a roll of lands which were to be given to the Queen in exchange for the lands so guaranteed.

Some of those who sustained the Queen's cause oppose the measures against the Pope; and some who were against her oppose the anti-papal Acts; but the King will get his own way. Norfolk himself is in trouble. Every day new books come out against the Pope. The Bishop of Rochester has been sent for, and is in great danger.

March 5. [*Letters, &c.* VII. n. 399.] The Common house went before the King in his palace, and the Speaker in the name of all his subjects desired reformation of the Acts made by the Spirituality in Convocation against the King and his subjects in calling them to Courts *ex officio* and not knowing their accusers, causing them to abjure, or else to burn them for pure malice, taking tithes and offerings contrary to justice, and being judges and parties in their own causes. It was ordained that eight of each House and 16 of the bishops, with other of the clergy, should discuss the matter and the King to be umpire.



1534.

## PROCEEDINGS IN CONVOCATION.

March 18. Convocation; adjourned to March 25.

March 25. Convocation; adjourned to March 27.

March 27. Convocation; adjourned to March 28.

March 28. Convocation; adjourned to March 31.

[Wilkins, Conc. iii. 70, gives, as from the Register of Convocation, the Bill on which was founded the Act "For the sub-  
"mission of the clergy, and restraint of appeals." This Bill contains clauses 1, 2, 3, and 7 of the Act as it finally received the Royal Assent, but not clauses 4, 5, 6, which concern "the question of appeals." The last clause (7) seems to have been added during the passage of the Bill through Convocation to the Commons, as the document ends with the usual formula "*soit baille aux Communes*," and "*à cette provision les Communes sont assentez*." It appears from the printed Statutes of the Realm, iii. 461, that both the sixth and the seventh clauses were additions "inserted on a schedule annexed to the original Act."]

## PROCEEDINGS OF PARLIAMENT.

Brought up from the Commons:—A Bill for the Abrogation of the payment of Peter pence. (25 Hen. VIII. c. 21.)

March 13. (58.) Abrogation Bill read once.

March 14. (59.) Abrogation Bill read a second time and delivered to the Chancellor.

March 15. (60.) Sunday.

March 16. (61.) Consecration Bill, "*per communes expedita*."

A Bill brought from the Commons for the deprivation of the Bishops of Salisbury (Campegio) and Worcester (Ghinucci).

March 17. (62.) Deprivation Bill (25 Hen. VIII. c. 27) read once.

Bill against the Nun of Kent, "*per communes expedita*."

March 18. (63.) Convocation.

March 19. (64.) Abrogation Bill read a third time and handed to the Chancellor.

Bill of the Bishop of Norwich's pardon for contempt, read once.

March 20. (65.) Abrogation Bill, with a proviso added by the Lords, read a fourth time; sent to the Commons; sent back to the Lords "*per communes expedita*."

Ratification Bill, of the King's second marriage (25 Hen. VIII. c. 22.) read once.

Deprivation Bill read a second time.

Bishop of Norwich's Bill read a second time.

Bill against the Nun of Kent handed to the Chancellor.

March 21. (66.) Bishop of Norwich's Bill read a third time, agreed on, and passed.

Deprivation Bill read a third time, agreed on, and passed.

Ratification Bill read a second time and handed to the Chancellor.

Bill against the Nun of Kent brought back by the Chancellor.

March 22. (67.) Sunday.

March 23. (68.) A proviso added to the Deprivation Bill, read three times, and agreed on.

Ratification Bill read a third time, and agreed.

March 24. (69.) Deprivation Bill handed to the Solicitor General to be taken to the Lower House.

March 25. (70.) Convocation.

March 26. (71.) Bill for judges' chaplains read three times and agreed; delivered to Sir Brian Tuke and the Clerk of the Crown to be taken to the Lower House.

Nine Bills brought up from the Commons.

(1.) Deprivation Bill, passed by the Commons.

(3.) Ratification Bill, passed by the Commons.

(5.) Bill for the punishment of heretics (25 Hen. VIII. c. 14.) read the first time.

Bill for the punishment of heretics "*ad-  
"missa fuit domino cancellario per suum  
"famulum*."

March 27. (72.)

Six Bills brought up from the Commons.

(1.) Bill for judges' chaplains, passed by the Commons.

"*Hodie communes superiorem domum  
"adierunt cum alia billa concernente submis-  
"sionem cleri regie sublimitati, prima et  
"secunda vice lecta*."

The Bill for the punishment of heretics, brought back by the Chancellor, transmitted from the Lower House, read the second time.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

March 25. [*Letters, &c.* VII. n. 373.] The Acts passed by the Commons against the authority of the Pope and Holy See have been to-day ratified by the nobles and clergy, to the great regret of good men who were in a minority in consequence of the threats and promises of the King. Nothing is wanted but the King's confirmation, which he delays until the arrival of the Bishop of Paris. The Acts for the deprivation of Campegio, &c. have passed. The King would not continue the Pope's jurisdiction for a million of gold, as it would invalidate Cranmer's sentence.

March 30. [*Letters, &c.* VII. n. 393.] The writer mentions the discussion and determination on the Succession Act. Oaths are to be taken to the succession and enforced by commissioners appointed for the purpose. Anne is made by Parliament Regent and guardian in case of the King's death.

I forgot to mention that the King has got the Parliament to pass an Act that henceforth no bishop or other clergyman shall act as judge in a case of heresy, but only those who shall be deputed on his part, a thing not only against the common law but against even the constitutions of the kingdom. There was some opposition, but it was overruled.

April 4. [*Letters, &c.* VII. n. 434.] The King has prorogued Parliament to November to complete the ruin of the churches and churchmen; and for a conclusion to this last session he has desired that the members should individually sign the Statutes. What the King has got passed against the Pope he has not exactly required of them to confirm but only conditionally in case of the Pope giving his consent to his desire between this and the Feast of St. John.

April 12. [*Letters, &c.* VII. n. 469.] On receiving notice of the Pope's sentence the King commanded that the Statutes made in Parliament, which he had suspended till St. John's Day, should be immediately published. [See Statutes of the Realm, iii. p. 471, where the writ here referred to is printed.]

April 16. [*Letters, &c.* VII. n. 490.] I am told this morning that the Bishop of Rochester and the late Chancellor and several others have been sent to the Tower because they have refused to swear to the Statutes lately made, and in this fear the mayor and governors of the city have been to day compelled to swear.

[March 23. Pope Clement VII.'s definitive sentence in favour of the validity of the marriage between Henry VIII. and Katharine of Arragon.—Wilkins, Conc. iii. 769.]

[April 7. The King by letters patent confirms the Act 25 Hen. VIII. c. 21. See Statutes of the Realm, iii. 471.]

[April 17. Sir Thomas More and the Bishop of Rochester sent to the Tower.—Herbert's Henry VIII. p. 401.]

April 17. Submission of the heads of the Orders of Friars in London, and oath taken by them to the Succession, &c.—Rymer, Fœdera, xiv. 487-489.



1534.

PROCEEDINGS IN CONVOCATION.

March 31. Ralph Pexsall, clerk of the Crown in Chancery, presented the writ for proroguing Convocation to the 4th of November. After this an instrument was presented which had been drawn up by William Saye, in which the Lower House gave answer to the question, "Has the Roman Pontiff any greater jurisdiction in this realm of England conferred upon him by God in Holy Scripture, than any other foreign bishop;" on this there were 34 votes in the negative, one doubtful, and four affirmative.

May 5. The Convocation of York assembled, and after several days session and mature deliberation, agreed unanimously that the Roman Pontiff has not by sacred Scriptures any greater jurisdiction in this realm of England than any other foreign bishop; this was signified to the King by the Archbishop in a certificatory letter, dated June 2, A.D. 1534.—(Wake, State of the Church, App. p. 221. *Letters*, &c. VII. nn. 769, 770.

PROCEEDINGS OF PARLIAMENT.

March 28. (73.)

"Hodie redacta alia billa concernens punitionem hereticorum, semel, denuo et ter est lecta, et per dominos consentita.

"Billa a domo communi transmissa concernens submissionem cleri domino regi, cui quædam provisio per dominos imposita, ter est lecta, et per dominos consentita, et traduntur domino cancellario."

March 29. (74.) Sunday.

March 30. (75.)

Two bills brought up from the Commons :—

(1.) "Una concernit submissionem cleri per communes expedita."

(2.) "Secunda concernit punitionem hereticorum per communes expedita."

A provision to be added to the Abrogation Bill introduced, read three times, and agreed by the Lords; sent to the Lower House by the King's solicitor, and sent back by the Commons passed.

At 2 p.m. the Lords in their robes, and the Commons, meet in the King's presence; Sir Humfrey Wingfield addresses the King; the Chancellor on the King's part answers, and nominates commissioners to administer the oath prescribed by the Act of Succession. (Ratification.)

The Parliament was prorogued to November 3rd following.

[The Ecclesiastical Statutes of 25 Hen. VIII. :—

Cap. 12.—An Act concerning the attainder of Elizabeth Barton (Nun of Kent) and others.

Cap. 14.—An Act for the punishment of heresy.

Cap. 16.—An Act that every judge of the High Court may have one chaplain beneficed with cure.

Cap. 19.—An Act for the submission of the clergy to the King's Majesty.

Cap. 20.—An Act restraining the payment of annates, &c.

Cap. 21.—An Act for the exoneration from exactions paid to the See of Rome.

Cap. 22.—An Act for the establishment of the King's succession.

Cap. 27.—An Act concerning the deprivation of the Bishops of Sarum and Worcester.

Cap. 29.—An Act concerning the Bishop of Norwich's pardon.

Cap. 33.—Concerning the assurance of Christ's Church in London to the King's Highness and to his heirs.]



## NOTES FROM FOREIGN CORRESPONDENCE.

April 22. [*Letters, &c.* VII. n. 530.] The King thinks that the imposition of the oaths helps to secure his position, but they really irritate the people. It is feared that he will put More and Fisher to death. The Archbishop of Canterbury has begun to exercise his anti-papality, making the bulls and dispatch of three bishoprics, and he has by his own authority consecrated the three bishops. The King has also set in train the sovereignty over the English Church, and has appointed a Jacobin and Augustinian provincials and general visitors of all the religious, giving them among other things the commission contained in the Bill hereto adjoined, which will strike your Majesty as something very novel. I send the Statutes made against the Queen and the Princess.

May 14. [*Letters, &c.* VII. n. 662.] The Queen has been asked to swear to the Statutes, but has refused, alleging the sentence given in her favour.

May 19. [*Letters, &c.* VII. n. 690.] Chapuys attended the Council, in which Fox laid before him the Statute of Succession, attested, as he said, by the signatures of all the realm except two women, Katharine and Mary. If they continued obstinate, he said the King would be obliged to proceed against them. The ambassador remonstrated, and even argued against the validity of the Statute on the ground of the imposition of the oaths; if the Statute had been valid the oaths would not have been requisite; the preamble was false, stating that the people had required the King to act as he had done; if they had taken the oath they might violate it just as Cranmer had violated his oath to the Pope the day after he took it. The Bishop of Durham, who had hitherto maintained the Queen's cause, but who did not wish to be a martyr, had not been allowed to come up to Parliament, but had been summoned to this Council. He now said that the Statute had been well considered; no one ought to refuse to swear; he argued that the Pope at Marseilles had promised a decree in the King's favour, thus making it clear that Henry's position was not in itself unjustifiable. Chapuys replied in much detail, and defended the Pope's temporising policy. The Bishop of Durham was silent. The Bishop of London next attacked the validity of the first marriage. On the King's appeal to a general Council, Chapuys argued that the King had no right to appeal; in talking to him the King had said that he would have nothing to do with a general Council; he would appeal from it to the Archbishop of Canterbury, who had taken upon himself to pass judgment on the Pope. The Archbishop of York then attacked the first marriage; and the Dean of the Chapel argued on the human origin of the Papal power. Cranmer put in a word now and then for the sake of showing that he could say something. The Duke of Norfolk, seeing the argument going against them, now insisted on the cogency of the Statutes as an accomplished fact which the King must abide by. Chapuys told him that the argument was like that of Mahomet, that his laws should be defended by the sword and not by reason; but even Mahomet did not force people to swear to his laws. York and Durham have turned coats. Chapuys pleaded with Cromwell for better treatment of the Queen and Princess.

May 29. [*Letters, &c.* VII. n. 726.] The Queen on Saturday was asked to take the oath. Chapuys failed to get an audience of the King. There is great alarm as to what may be in store for Katharine in consequence of the refusal.

June 7. [*Letters, &c.* VII. n. 809.]

June 23. [*Letters, &c.* VII. n. 871.] Anne has threatened that if she is left Regent she will put the Princess Mary to death. The sect is on the increase. The Archbishop of Canterbury, reserving to himself the determination, which he promises to declare within a year, whether there be any purgatory, whether it be well to pray to saints or worship them, whether it be lawful for priests to marry, and whether pilgrimages be meritorious, has forbidden by public command any preacher meanwhile to make

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

May 2. Determination of the University of Cambridge against the Pope's supremacy.—Wilkins, Conc. iii. 771.

May 5. Oaths and submissions.—Rymer, xiv. 489.

May 29. Oaths and submissions of the Carthusians.—Rymer, xiv. 491.

June 20. Oath of submission taken by the Chapter of St. Paul's.—Wilkins, Conc., iii. 774.

June 27. Protestation of the University of Oxford against the Pope's supremacy.—Wilkins, Conc. iii. 775.



1534.

## PROCEEDINGS IN CONVOCATION.

## PROCEEDINGS OF PARLIAMENT.

November 4. Convocation; adjourned to November 11.

November 11. The Archbishop had a long communication touching heresy and the reformation thereof.

The Archbishop ordered that in all and singular proxies exhibited before him in his convocation or sacred provincial synod, and to be hereafter exhibited, the words "apostolicæ sedis legatus" should be expunged, and the word "metropolitanus" inserted in its place.

November 3. *Parliament*, 26 *Hen. VIII.*—Rolls of Parliament, I. App. cexliii.; Statutes of the Realm, iii. 492.

[No journals.]

[The Ecclesiastical Statutes of this Session are:—

Cap. 1.—An Act concerning the King's Highness to be supreme head of the Church of England, and to have authority to reform and redress all errors, heresies, and abuses in the same.

Cap. 2.—An Act ratifying the oath that every of the King's subjects hath taken and shall hereafter be bound to take for the due observation of the Act made for the surety of the succession of the King's Highness in the Crown of the Realm.

Cap. 3.—An Act concerning the payment of first fruits of all dignities, benefices, and promotions spiritual, and also concerning one annual pension of the tenth part of all the possessions of the Church, spiritual and temporal, granted to the King's Highness and his heirs.

Cap. 13.—An Act whereby divers offences be made high treason, and taking away all sanctuaries for all manner of high treasons.

Cap. 14.—An Act for nomination and consecration of suffragans within this realm.



## NOTES FROM FOREIGN CORRESPONDENCE.

any mention of these articles in his sermons either for or against. This is only a preparation for the work of the coming Parliament in which the King intends to take the goods of all the churches, which he has not yet ventured to propose, only that he might not attempt too many dangerous things at once.

July 27. [*Letters, &c.* VII. n. 1013.] It is said that the King has sent for Melancthon. Lord Dacres has been accused of treason and his condemnation was expected, as both the King and Anne were against him. But he has been declared innocent by 24 lords unanimously, and acquitted by 12 judges according to the custom of England; a novelty, for no man has for a hundred years got to the point that he was at and escaped. Norfolk filled the royal seat at the trial; he feared that Cromwell, if he began to lay hands on such lords, would follow the same course as the Cardinal. Dacres notwithstanding has been shut up as much as ever, because he would not sign a schedule asking pardon of the King.

August 11. [*Letters, &c.* VII. n. 1057.] Of seven houses of Observants five have already been emptied of friars, because they have refused to swear to the Statutes made against the Pope.

August 29. [*Letters, &c.* VII. n. 1095.] Some fear that in the coming Parliament, which will re-assemble in November, the King will get them to declare the Queen and Princess to have incurred the penalties of the Statute made against them. All the Observants of this kingdom have been driven out of their own houses for refusing the oath and have been distributed in several monasteries where they have been locked up in chains and worse treated than they could be in prison.

September 10. [*Letters, &c.* VII. n. 1141.] The ambassadors from Lübeck and Hamburg have gone, leaving three doctors to decide the articles in discussion and to discuss the whole subject at the coming Parliament. They are at present occupied in writing on the question of the Sacrament. God grant that they may conclude about it and about confession otherwise than the world expects. It is thought that the King will hasten his Parliament in order to dispatch the said doctors sooner, and Cromwell understands that at the Parliament the King will distribute among the gentlemen of the kingdom the greater part of the ecclesiastical revenues to gain their good will.

September 30. [*Letters, &c.* VII. n. 1206.] Chapuys reports interviews with Lords Hussey and Darcy. Hussey thought that if the Emperor would interfere there would be an insurrection among the people, who would be immediately joined by the nobility and clergy, who were very powerful and were kept in disorder. Darcy assured him that there were in the north 1,600 earls and others opposed to the King's dealings with the faith. It has been proposed that measures should be taken in Parliament to introduce the Lutheran sect. Darcy and his adherents would do their best to animate the people against it. A regular scheme of conspiracy is canvassed, to which Dacre and the Earl of Derby would adhere.

October 13. [*Letters, &c.* VII. n. 1257.] There has been a report of the Pope's death. Cromwell rejoiced that this great devil was dead. Henry declares that he will not be mocked by proposals that he should submit to a new Pope, for he would have no more regard for any Pope that might be chosen than for the meanest priest of his kingdom.

November 17. [*Letters, &c.* VII. n. 1437.] I have just heard that the King this morning has been declared by Act of Parliament supreme head of the English Church, and that as such the tributes and moneys that the English used to pay to the Holy See are to go to him. They have also ratified all that was ordained at the last Parliament against the Holy See, taking away all the conditions and suspensions which were then made.

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS. &amp;c.

*Hall's Chronicle*, page 815.—“ July 9. Was the Lord Dacres of the north arraigned at Westminster of high treason, where the Duke of Norfolk sat as Judge and High Steward of England. . . . He was found that day by his peers not guilty.”

July 27. Submission and oaths of the Provost and Fellows of Oriel.—Rymer, xiv. 495.

Similar acts by the monastic foundations.—*Ibid.*, 495–527.

Similar acts by the clergy; *Letters, &c.* VII. n. 1025; n. 1121, &c.

August. [*Letters, &c.* VII. n. 1043.] *Reformation of the Church*. “ Let six or seven masters of the Chancery, “ of the right sort, nothing favouring the Pope's laws “ nor having living thereby, be appointed to judge “ questions of heresy.”

November. [*Letters &c.* VII. n. 1385.] *Spiritual Jurisdiction*. “ Recommends that all cases be judged in “ the King's courts . . . . There would be more divines “ than lawyers among the clergy . . . . The clergy “ also are judges in their own causes, and no appeal “ lies but in certain cases of late ordained in parlia- “ ment, which be very few in number.”

*Hall's Chronicle*, page 816.—“ In this year, the 3rd day of November, the King's Highness held his High Court of Parliament, in the which was concluded and made many and sundry good, wholesome, and godly Statutes; but among all one special Statute which authorised the King's Highness to be supreme head of the Church of England, by the which the Pope with all his college of cardinals, with all their pardons and indulgences was utterly abolished out of this realm, God be everlastingly praised therefore. In this Parliament also was given to the King's Highness the first fruits and tenths of all dignities and spiritual promotions. And in the end of the same Parliament the King's Majesty most graciously granted, and willed it by the same Parliament to be established, his most gracious and general free pardon.”



## 1534.

## PROCEEDINGS IN CONVOCATION.

November 18. Examination of books written in English, one of which was ascribed to Tyndale, was committed first to the Bishops and then to the prolocutor and clergy.

November 25. A long discussion on the contents of the books.

December 2. The prolocutor called in to examine the books.

December 9. Adjournment.

December 11. The Abbot of Northampton exhibited a "prymer" containing rubrics, which seemed to the prelates to be suspect, and not to be inserted therein, because they were not consonant to the determination of the Church; it was therefore decreed that the people should not be instructed in the said rubrics, nor believe in their contents or put any hope in them.

December 16. Adjournment.

December 19. The prolocutor communicated to the Archbishop and Bishops the censures of the Lower House on the books committed to them for examination.

The Upper House agreed that the Archbishop should urge upon the King :—

- (1.) That he should order all suspected books, especially in English, to be brought in within three months, before persons to be named by the King.
- (2.) That he would decree that Holy Scripture should be translated into English by good and learned men to be named by the King, and delivered to the people for their instruction.
- (3.) That he would forbid, under penalties, any lay or secular person to dispute publicly concerning the Catholic faith or articles of faith, or Holy Scripture, or the meaning thereof, or to contend in anywise quarrelsomely for the future.

The Convocation was prorogued to November 4, 1535, and on that day to February 5, 1536.

## PROCEEDINGS OF PARLIAMENT.

Cap. 15.—An Act for taking away certain exactions taken within the archdeaconry of Richmond by spiritual men.

Cap. 17.—An Act that no farmers of spiritual persons shall be compelled or charged to pay for their lessours first fruits, or years pension the tenth granted to the King's Highness.

Cap. 22.—An Act concerning the attainder of the Bishop of Rochester and others.

Cap. 23.—An Act concerning the attainder of Sir Thomas More, Knight.]

## 1535.

*Parliament.*

February 4. Prorogued to November 3.

January 26. The King issues letters to the Archbishop of York to prorogue his Convocation, on February 3, to some day to be appointed by himself; and the Archbishop certifies the execution of the order in a letter dated March 8.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

November 28. [*Letters, &c.* VII. n. 1482.] The King, who, as the head of the Church in his kingdom, was intending to take back into his hands all Church property and distribute only a frugal sustenance to ministers of the Church, is for the present satisfied to leave the Churchmen in possession of their property, if they will contribute to him a yearly rent of 30,000*l.*, and grant him the first fruits of all benefices. It is true he has always taken by apostolic privilege the revenues of vacant bishoprics, but now he claims the whole revenue, not only of bishoprics, but of all other benefices, which amounts to an immense sum. Since the King was determined to bleed the Churchmen, he has done much better to do it thus than to take all their goods, to avoid the murmur and hatred, not only of the clergy, but of the people, especially of those who before endowed churches, or of their successors. Moreover, it would have been necessary, to stop the mouths of many people, to give the greater part of those goods to gentlemen and others.

The good prelates here are now in dispute with the doctors whom the King has brought from Germany about the sacrifice of the mass, and whether faith alone without works is sufficient for our salvation. This discussion is carried on in writing, and if the German doctors get the advantage, which God forbid, they will infect the whole country.

December 19. [*Letters, &c.* VII. n. 1554.] The King, besides the 30,000*l.* which he has newly obtained from the clergy, and an ordinary fifteenth from the laity which was granted him last year, and which may amount to 28,000*l.*, has just imposed a tax, by authority of Parliament, of the twentieth penny of all goods of his subjects, and that foreigners shall pay double, which will amount to a great sum. This is Cromwell's doing; the people are in despair. The King has, by Act of Parliament, taken away from the Welsh their native laws and privileges.

I am told Parliament will be prorogued to-day till Thursday after Ascension Day. Nothing has been said of matters of the faith, at which the doctors of Lübeck and Hamburg are dissatisfied, and say that it is evident that the King does not care about the reformation of religion, but only for filling his coffers. The King does not greatly trust the oath that he has forced people to take about the validity of his last marriage and the succession, and he has not been pleased at the discretionary punishment that has been appointed against those who murmured at it; for which reason he has caused a more severe Statute to be passed, inflicting the penalty of death and confiscation on whosoever shall call the Queen and Princess by the said titles, or speak against the second marriage, at which the people is in great fear. The Statute which had been passed last year against importing new wines from France before Candlemas, or shipping except in English bottoms, has been revoked as contrary to the treaties with France.

[The King's proclamation for the bringing in of seditious books, issued in compliance with the prayer of the Convocation.—Wilkins, *Conc.* iii. 776.]

January 15. The King's proclamation of his title "in terra supremum caput Anglicanæ ecclesiæ."—Rymer, xv. 549.

[Cromwell's commission as vicegerent is not to be found, nor is the date at which it was granted ascertained. The powers given are described in a document printed by Wilkins, *Conc.* iii. 784, from Burnet, *Hist. Ref.*, ii. App. 303.]

June 9. The King's proclamation of the abrogation of the usurped authority of the Pope, and order for erasing his name from the service books.—Wilkins, *Conc.* iii. 722; Burnet, *Hist. Ref.*, iii. App. p. 77, with date June 25.

June 17. Bishop Fisher, tried by a special commission of oyer and terminer for treasonable denial of the King's supremacy, beheaded June 22.



1535

## PROCEEDINGS IN CONVOCATION.

November 4. Convocation of Canterbury prorogued to February 5, 1536.

1536.

*Convocation of Canterbury.*—February 5. By commission from the Archbishop, the Bishop of London adjourns to the 14th.

[The Convocation of York seems to have been summoned for February 4.—Wake, 489.]

February 14. The two Houses held communications on the payment of the residue of the great subsidy of 1531, and about the account to be made thereof.

March 6. Discussion of the account of the subsidy.

March 31. Discussion of the account.

April 14. (Session 14.) The Convocation was dissolved. [April 24, Wilkins, Conc. iii. 803.]

*Convocation of Canterbury.*—Summoned in obedience to a Royal Writ issued May 10.—Wake, App. p. 224.

June 9. (1.) At St. Paul's, after the Mass of the Holy Ghost, the Archbishop, in the Lady Chapel, heard a sermon by the Bishop of Worcester, thence the two Houses went to the Chapter House, where the Archbishop, after formal business, declared the causes of the Convocation, and directed the clergy to choose a prolocutor to be presented on the 16th of June.

June 16. (2.) Dr. Bonner presents as prolocutor elect Richard Gwent, who is thereupon approved and confirmed by the Archbishop. Mr. William Peter "allegavit quod ubi hæc synodus " convocata sit auctoritate illustrissimi principis, et quod dictus " princeps supremum locum in dicta convocatione tenere debeat, " ac eo absente honorandus magister Thomas Cromwell vicarius " generalis ad causas ecclesiasticas ejus vicegerens ejus locum " occupare debeat, ideo petiit prædictum locum sibi assignari; " ac ibidem præsentavit litteras commissionales dicti domini " sui sigillo principis ad causas ecclesiasticas sigillatas. Quibus " perlectis dictus reverendissimus assignavit sibi locum juxta " se; deinde continuata erat hujusmodi convocatio usque ad " diem Mercurii proximo sequentem."

## PROCEEDINGS OF PARLIAMENT.

September 15. *State Papers*, i. 449. A letter of Lord Chancellor Audley on the meeting and prorogation of Parliament. He has to meet the two Houses on November 3, and prorogue to the 4th of February, as last year.

November 3. Prorogued to February 4.

*Parliament, 27 Hen. VIII.*—February 4. The Parliament meets.—Rolls of Parliament, i. App. page cccxlv.; Statutes of the Realm, iii. 531.

[*Ecclesiastical Statutes of 27 Hen. VIII.* :—

Cap. 8.—An Act for the discharge of payment of the tenth in that year in which they pay their firstfruits.

Cap. 15.—An Act whereby the King's Majesty shall have power to nominate thirty-two persons of his clergy and lay fee for the making of ecclesiastical laws.

Cap. 19.—An Act limiting an order for sanctuaries and sanctuary persons.

Cap. 20.—An Act containing an order for tithes through the realm.

Cap. 21.—An Act limiting an order for payment of tithes within the city of London.

Cap. 27.—An Act establishing the Court of Augmentations.

Cap. 28.—An Act whereby all religious houses of monks, canons, and nuns, which may not dispend manors, lands, tenements, and hereditaments above the clear yearly value of 200*l.* are given to the King's Highness, his heirs and successors for ever.

Cap. 42.—An Act concerning the exoneration of Oxford and Cambridge from payment of first fruits and tenth.

Cap. 45.—An Act concerning the assurance of all the temporalities belonging unto the bishoprick of Norwich unto the King's Highness and his heirs.]

April 14. Dissolution.—Wake, page 489.

*Parliament 28 Hen. VIII. (Journals of the Lords).*—June 8. (1.) At Westminster, opened by the Chancellor Audley who declares the cause of summons, (1) the securing of the succession, and (2) the abrogation of the Marriage Act of the last Parliament.

June 10. (2.) Adjournment.

June 12. (3.) The King approves Richard Rich as Speaker.

June 13. (4.) } No ecclesiastical business.  
June 14. (5.) }

June 17. (6.) Continuance Bills; none of ecclesiastical importance, &c.

June 19. (7.) Ditto.



## NOTES FROM FOREIGN CORRESPONDENCE AND STATE PAPERS.

[The letters of Chapuys to the Emperor continue during the following years, but are not at present accessible. Extracts for the years 1535 and 1536 are given by Mr. Froude, in an appendix on the history of Anne Boleyn; *Hist. Engl.* (ed. 1870) vol. iv.; and, for the years 1541 and 1542, by M. Gachard, *Analectes Historiques*, pp. 234 sq.; but these throw no special light on the Parliamentary proceedings.]

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

July 1. Sir Thomas More, tried by a like commission for the same offence, beheaded July 6.

August 30. Excommunication of the King and his abettors; by Pope Paul III.—Wilkins, *Conc.* iii. 792-797.

[The visitation of the monasteries takes place in the autumn. The King's letter to the Archbishop of Canterbury inhibiting him from visitation during the royal visitation, dated September 18, is in Wilkins. *Conc.* iii. 797.]

*Hall's Chronicle*, page 818.—“The 4th day of February the King held his High Court of Parliament at Westminster in the which was many good and wholesome Statutes and laws made and concluded. And in this time was given unto the King, by the consent of the great and fat abbots, all religious houses that were of the value of 300 marks and under, in hope that their great monasteries should have continued still; but even at the time one said in the Parliament House that these were as thorns, but the great abbots were putrified old oaks, and they must needs follow; and so will other do in Christendom, quoth Doctor Stokesley, Bishop of London, or many years be passed.”

*Wriothesley's Chronicle*, i. 42. The Parliament ended on the Thursday before Easter (April 13).

[May 17. Archbishop Cranmer “cum consilio juris” declares the marriage solemnized between the King and Queen Anne to be null and void. This instrument was sealed June 10, and subscribed by both Houses of Convocation, June 28.—Wilkins, *Conc.* iii. 803, 804.

The Queen was executed on the 19th of May; having been on the 15th found guilty of treasons, after trial before the Duke of Norfolk, High Steward, and Peers.]

*Hall's Chronicle*, page 819.—“The 8th day of June the King held his High Court of Parliament, in the which Parliament the King's first two marriages, that is to say, with the Lady Katharine, and with the Lady Anne Boleyn, were both adjudged unlawful. . . . In the time of this Parliament the Bishops and all the clergy of the realm held a solemn convocation at Paul's Church in London, where, after much disputation and debating of matters, they published a book of religion intitled Articles devised by the King's Highness, &c. In this book is specially mentioned but three sacraments. . . .”



1536.

## PROCEEDINGS IN CONVOCATION.

June 21. (3.) The Archbishop produced the definitive sentence of nullity of the marriage with Anne Boleyn; after this was read Cromwell asked the Archbishop to approve the sentence expressly, and this was done.

June 23. (4.) The prolocutor exhibited a book containing wicked dogmas preached in the province, and enumerated 67 articles of extreme Protestant doctrines, with a protest that the clergy were nowise minded to recognize the Pope's authority.

June 28. (5.) The prolocutor presented an instrument containing the definitive sentence above mentioned, and declared that it had been expressly approved by all the clergy of the Lower House; which instrument was subscribed by the Archbishop, the bishops, prelates, and prolocutor.

June (?), July (?), July 8. Several sessions in which nothing was done; July 2 was Sunday. The sittings may have been July 3 and July 8. July 9 was Sunday.

July 11. Edward Foxe, Bishop of Hereford, exhibited a Bill containing articles of faith and ceremonies, which after reading was subscribed by Cromwell, the Archbishop, the other prelates, the prolocutor, and the clergy.

[These articles are the ten articles on: 1.—Creeds; 2. Baptism; 3. Penance; 4. The Eucharist; 5. Justification; 6. Images; 7. Worship of Saints; 8. Prayers to Saints; 9. Rites; 10. Purgatory; subscribed by the Archbishop of York and the Bishop of Durham as well as by the Convocation of Canterbury, and published by the King as the conclusions of the Convocation. Printed in Wilkins, Conc. iii. 817, and Burnet, Hist. Ref., I. App. p. 305.]

July 15. (19 Wilkins, iii. 803.) (Session 8.) (Saturday.) It was agreed by Cromwell and both Houses of Convocation to make certain ordinances on festivals to be observed throughout the year.

[Printed in Wilkins, Conc. iii. 823.]

## PROCEEDINGS OF PARLIAMENT.

June 20. (8.) Continuance Bills; none of ecclesiastical importance, &c.

June 21. Convocation.

June 22. (9.) No ecclesiastical business.

June 26. (10.) A Bill introduced allowing masters of arts and bachelors of civil law to hold two livings, read once.

June 27. (11.) The same Bill, read a second and third time.

June 29. (12.) Adjournment.

June 30. (13.) Bill of Succession, read once.

July 1. (14.) Bill of Succession, read a second and third time, and agreed to by the Lords; handed to Sir Brian Tuke and the Clerk of the Crown to be taken to the House of Commons.

July 4. (15.) Bill of Succession, brought up from the Commons.

Bill for depriving the authority of the Bishop of Rome, brought by the Commons, delivered to the Chancellor, and brought back by him.

July 5. (16.) Bill on the Pope's authority, read once, and delivered to the Chancellor.

July 6. (17.) A Bill introduced by the Commons touching the taxation of persons belonging to ecclesiastical franchises but dwelling in towns.

Bill on the Pope's authority, read a second time.

July 7. (18.) Bill on the taxation of persons belonging to ecclesiastical franchises, read a second time.

July 10. (19.) A Bill for the restoration of first fruits during a vacancy, introduced.

July 11. Convocation.

July 12. (20.) Bill on the Pope's authority, read a first time after amendments.

Bill on papal dispensations granted before March 12, 1534, read once and handed to the Chancellor.

Bill on first fruits, read first time.

Bill on non-residence, brought from the Commons.

July 13. (21.) Bill allowing the chancellor of augmentations and King's serjeants to have chaplains, read three times, and sent to the Commons.

Bill on first fruits, handed to the Chancellor.

July 14. (22.) Bill on non-residence, read the first time.

Bill for masters of arts, &c. to hold two livings, read a second and third time, and assented to; sent to the Commons.

Bill on the Pope's authority, read a third time, and assented to; sent to the Commons.

Bill on first-fruits, } read twice, and sent  
Bill on non-residence, } to the Commons.

Bill on the Pope's authority, brought up from the Commons and passed.

July 15. (23.) No ecclesiastical business.

July 17. (24.) The Act confirming papal dispensations before 1534, read a second and third time, and agreed to.

Bills brought up from the Commons:

1. On first fruits, }  
6. On non-residence, } passed.



NOTES FROM FOREIGN CORRESPONDENCE  
AND STATE PAPERS.CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

June 23. List of erroneous opinions denounced in Convocation, with a protest against being supposed to recognize papal authority, and a recognition of the King as supreme head on earth.—Wilkins, Conc. iii. 804.

June 28. The definitive sentence as subscribed.—Wilkins, Conc. iii. 803.

July 11. The articles as subscribed.—Wilkins, Conc. iii. 817.

July 12. Letter of the King to the Archbishop against the preachers; the King, for securing good and catholic conformity, has "caused all you the bishops with the clergy of our realm in solemn convocation deliberately disputing and advising the same, to agree to certain articles."—Wilkins, Conc. iii. 807.

July 15. Act for the abrogation of certain holy days according to the transumpt lately sent by the King's Highness to all bishops.—Wilkins, Conc. iii. 823.

"It is therefore by the King's Highness' authority, as supreme head in earth of the Church of England, with the common consent of the prelates and clergy of this his realm in convocation lawfully assembled and congregated, among other things, decreed, ordained, and established" &c.

This Act was issued by royal letters under signet, with the date, Chertsey, August 11.



## 1536.

## PROCEEDINGS IN CONVOCATION.

July 20. The Bishop of Hereford produced a Bill containing the causes and conclusions why the King ought not to appear in the general Council recently summoned by the Pope. This Bill was subscribed by Cromwell, the Archbishop, and both Houses.

[Printed in Herbert's Henry VIII., p. 469, and in Wilkins, Conc. iii. 808.]

The same day at 4 p.m. the Convocation was dissolved.

[Answer of the Convocation of York to the ten articles sent to them; undated.—Wilkins, Conc. iii. 812.]

## 1537.

No Convocation or Parliament.

## 1538.

No Convocation or Parliament.

## 1539.

*Convocation of Canterbury.*—Summoned in obedience to a Royal Writ, dated March 12.

May 2. Convocation meets at St. Paul's.

[The Convocation of York met the same day.—Wake, p. 492; Wilkins, Conc. iii. 850.]

May 7. Convocation.

## PROCEEDINGS OF PARLIAMENT.

July 18. (25.) Bill for dispensations, brought up from the Commons, and passed.

The same day in the afternoon the King dissolved the Parliament.

[Ecclesiastical Acts of 28 Hen. VIII.:—

Cap. 7.—An Act for the establishment of the succession of the Imperial Crown of this realm.

Cap. 10.—Act extinguishing the authority of the Bishop of Rome.

Cap. 11.—An Act for the restitution of the first fruits in the time of vacation to the next incumbent.

Cap. 13.—An Act compelling spiritual persons to keep residence upon their benefices.

Cap. 16.—An Act for the release of such as have obtained pretended licences and dispensations from the See of Rome.

(1.) The Bill allowing masters of arts and bachelors of laws to hold two livings.

(2.) The Bill allowing the Chancellor of the Augmentations to have chaplains.

(3.) The Bill providing for the taxation of the persons belonging to Church franchises.

These Bills do not pass into Law.]

*Parliament, 31 Hen. VIII.*—Summoned by writ of March 1.—*Journals of the Lords*, i. 103.

April 28. (1.) Parliament meets at Westminster, the King being present.

May 3. (2.) The King present.

May 5. (3.) The Chancellor states that it is the King's especial desire that all differences of religious opinion should be eradicated, and that it is his will that some persons should be chosen to examine such opinions and report on them in the present Parliament; this was approved, and the following were nominated, with leave to absent themselves from Parliament during the process of their examinations:—

Cromwell,  
Archbishop of Canterbury,  
Bishops of Bath, Ely, Bangor, Worcester,  
Archbishop of York,  
Bishops of Durham and Carlisle.

May 6. (4.) Rehabilitation Bill read.  
A Bill for the rehabilitation of the Religious, introduced.

May 7. Convocation.

May 8. (5.)

May 9. (6.)

May 10. (7.)



NOTES FROM FOREIGN CORRESPONDENCE  
AND STATE PAPERS.CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

July 20. The conclusions of the Convocation touching general Councils.—Wilkins, Conc. iii., 808, 809.

[Cromwell's injunctions: undated.—Wilkins, Conc. iii. 813.]

[Nov. 19. The King's instructions to the bishops about teaching the people.—Wilkins, Conc. iii. 825.]

[September 18. 1537. Mandate of the Archbishop of York for preaching the abolition of the papal supremacy.—Wilkins, Conc. iii. 828.]

[“The Godly and pious Institution of a Christian Man,” published.]

[October 1. 1538. Royal Commission to the Archbishop of Canterbury and other bishops and divines to proceed against anabaptists: “vices nostras committimus cum ejus libet tam ecclesiasticæ quam secularis coercionis potestate.”—Wilkins, Conc. iii. 837.]

October 11. Cranmer's mandate for the publication of Cromwell's injunctions.—Wilkins, Conc. iii. 837.]

November —. Royal order issued for observance of certain ceremonies which had not been abrogated. (See proclamation of February 26, 1539.)

December 17. Final bull of Paul III. against Henry VIII.—Wilkins, Conc. iii. 841.

February 26. 1539. Royal proclamation concerning rites and ceremonies.—Wilkins, Conc. iii. 842.

November 14. Mandate from the King forbidding the printing of Bibles except under supervision of Cromwell.—Wilkins, Conc. iii. 846.

[Ecclesiastical Statutes of 31 Hen. VIII. :—

Cap. 6.—An Act that such as were religious may purchase.

Cap. 8.—An Act that proclamations made by the King shall be obeyed.

Cap. 9.—An Act for the King to make bishops.

Cap. 13.—An Act for dissolution of abbeyes.

Cap. 14.—An Act abolishing diversity of opinions.

\* \* The determination of the Six Articles is thus described: “After a great and long deliberate and advised disputation and consultation had and made concerning the said articles, as well by the consent of the King's Highness as by the consent of the Lords Spiritual and Temporal, and other learned men of his clergy in their Convocation, and by the consent of the Commons in the present Parliament assembled, it was and is finally resolved, accorded, and agreed.”

The penal enactment is thus introduced: “It is therefore ordained and enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same.”]

*Hall's Chronicle*, pages 827, 828, mentions the Acts of Attainder and the Bill of Six Articles.



1539.

## PROCEEDINGS IN CONVOCATION.

May 14. Convocation.

June 2. (Session 6.) Cromwell lays the questions contained in the Bill of Six Articles before the two Houses, and asks for their answers to be given on the following Thursday.

June 5. (P) The answers to the questions contained in the Bill of Six Articles were probably given according to Cromwell's demand. See them in Wilkins, Conc. iii. 845.

## PROCEEDINGS IN PARLIAMENT.

May 12. (8.) Bill for the punishment of those who should infringe the King's proclamations, read the first time.

May 13. (9.) Bill for giving the King the monasteries suppressed or to be suppressed.

May 14. Convocation.

May 15. Ascension Day.

May 16. (10.) Bill for the monasteries, read a second time.

The Duke of Norfolk states that, as the Lords appointed on the 5th of May to examine into diversities of religious opinion had done nothing, and did not seem likely to agree, the following six articles should be examined in Parliament, and a penal Statute enacted to enforce the conclusions framed thereon :—

1. The Eucharist.
2. Communion in both kinds.
3. Vows of chastity.
4. Private masses.
5. Marriage of priests.
6. Auricular confession.

May 17. (10.)

May 19. (11.) The King present. The Monasteries Bill, read the third time, and assented to.

May 20. (12.) The Duke of Norfolk proposes that, as the King has incurred great expense in the work of defence and reformation, for which no recompense could be made him for want of time, two Lords, one for the Lords Spiritual, and one for the Lords Temporal, should be assigned to pray the King to prorogue the Parliament, until such time as they could be prepared to make such recompense: it was determined that the Chancellor should explain this to the King on the morrow.

May 21. (13.) The King present. The Chancellor laid yesterday's vote before the King.

May 22. (14.)

May 23. (15.) Bill authorising the King to establish new bishoprics, read three times, sent down to the Commons, brought back again, and passed.

The Monasteries Bill, brought up from the Commons, and passed.

Parliament prorogued by commission to May 30; it being agreed by the two Houses that all Acts passed or in process of discussion should remain in their present state, notwithstanding the prorogation.

May 30. (17.) The Chancellor declares the King's will that a penal Statute shall be made on the Six Articles. It was agreed that two forms of Statute should be framed, one by the Archbishop of Canterbury, the Bishops of Ely and St. David's, and Dr. Petre; the other by the Archbishop of York, the Bishops of Durham and Winchester, and Dr. Tregunwell; both forms to be laid before the King on the Sunday following.

May 31. (18.)

June 2. Convocation.

June 3. (19.)

June 4. (20.) Cromwell introduces a Bill concerning the ordination of priests, which is committed to the Bishops of Durham and Winchester to be reformed.

June 5. Convocation (P)

June 6. (21.)

June 7. (22.) Bill of Six Articles, read the first time.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS &c.



1539.

## PROCEEDINGS IN CONVOCATION.

July 1. (Session 12.) Convocation prorogued to November 4.  
November 4. Prorogued to January 16.

1540.

*Convocation of Canterbury.*

January 16. Prorogued to April 14.

April 14. (Session 1.)—Convocation meets at St. Paul's.

April —. (Session 2.)

In the first two sessions Richard Gwent was chosen and admitted prolocutor.

In the next two sessions the question of subsidy was discussed.

## PROCEEDINGS OF PARLIAMENT.

June 9. (23.) Bill of Proclamations, read a second time.

Bill of Six Articles, read a second time.

June 10. (24.) Bill of Proclamations, read a third time.

Bill of Six Articles, read a third time, and sent to the Commons.

June 11. (25.)

Bill concerning residentiaries, brought in by the Chancellor, read a first time.

June 12. (26.) Bill of Proclamations, delivered to the Chief Justices, the Master of the Rolls, and the King's Attorney and Solicitor to be reformed.

June 13. (27.) Bill of Proclamations, read again (*denuo*) and ordered to be put on parchment.

June 14. (28.) Bill of Proclamations, read again (*iterum*) and assented to; sent to the Commons.

Bill of Six Articles brought up from the Commons, with an additional proviso, which is read twice.

June 16. (29.) Bill of Six Articles passed, the proviso having been read a third time.

June 17. (30.)

June 18. (31.)

June 19. (32.) Star Chamber.

June 20. (33.) The Rehabilitation Bill (see May 5), having been rejected by the Commons, a new form is read once.

June 21. (34.)

June 23. (35.) The Rehabilitation Bill and Bill of Six Articles handed to the Chancellor.

June 24. (36.) The Bill of Proclamations having been thrown out by the Commons, a new one is brought in and read twice.

An amendment touching the married priests introduced into the Bill of Six Articles.

June 25. (37.) The Bill of Proclamations, read a third time and sent to the Commons for verbal amendments.

June 26. (38.) The Bill of Proclamations, read again and passed.

June 27. (39.) A schedule, to be annexed to the Bill of Six Articles, read a first time.

June 28. (40.) The schedule annexed, read a third time and agreed to; the same day it is brought up from the Commons and passed.

Rehabilitation Bill passed.

Parliament was prorogued to November 3.

November 3. Parliament prorogued to January 14.

*Parliament, 32 Henry VIII.*

January 14. Prorogued to April 12.

*Journals of the Lords.*—April 12. (43.) Parliament opened by the Chancellor.

Cromwell, as Vicegerent, states that the King, in order (1) "ut vera doctrina ad evangelii normam elimata et proposita edatur;" (2) "ut ceremoniarum piæ observationes ab impiis secernantur, earum verus usus doceatur et propaleatur, abusus vero aboleascet et omnino tollatur;" and (3) "ut moveantur omnes omnis ordinis Angli et suarum ditionum incolæ, ut ab impia et irreverenti biblicorum tractatione et sententiarum iniqua contortione et temeraria interpretatione prorsus absterneant," has chosen two commissions: one for doctrine and the other for ceremonies; consisting of bishops and doctors named in the speech, who will have his Majesty's assistance.

The Lords all approved these nominations, and agreed that the whole of every Monday, Wednesday, and Friday should be devoted to the use of the commissions and likewise the afternoons of the other days of the week.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

[Ecclesiastical Statutes, 32 Hen. VIII. :—

Cap. 7.—Payment of tithes and offerings.

Cap. 10.—An Act for moderation of incontinence for priests.

Cap. 12.—Concerning sanctuaries.

Cap. 15.—Commissions to be made to bishops' chancellors, commissaries, archdeacons, &c., concerning Christian religion.

\*.\* Addition to the Act of Six Articles.

Cap. 22. For bishops concerning payment of tithes.

Cap. 23. The subsidy of the clergy of Canterbury.

Cap. 24. The possessions of the Hospital of St. John of Jerusalem.

Cap. 25. The dissolution of the pretended marriage of Lady Anne of Cleves.

\*.\* This Act rehearses the instrument drawn up in the name of the clergy.

Cap. 26. Concerning Christ's religion.

\*.\* The King has appointed bishops and doctors to declare the articles of the Christian Faith. All definitions, according to God's Word and the Gospel, by the King's advice and confirmation by letters patent made

*Hall's Chronicle*, page 838 :—"The 12th day of April began a Parliament, and Sir Nicholas Hare restored to the office of Speaker, in the which was freely granted, without contradictions, four fifteenths and a subsidy of 2s. of lands and 12*d.* of goods towards the great charges of bulwarks." Hall likewise notes the dissolution of "the religion of St. John," and the trial and execution of Cromwell.



## 1540.

## PROCEEDINGS IN CONVOCATION.

## PROCEEDINGS OF PARLIAMENT.

April 13. (44.)

April 14. (45.)

April 15. (46.)

April 19. (47.)

April 20. (48.)

April 22. (49.) Bill for giving the King the possessions of the Knights Hospitallers, introduced.

April 26. (50.) Bill touching the Hospitallers read a first time.

April 27. (51.)

April 29. (52.) Hospitallers Bill, put on parchment.

May 1. (53.) Hospitallers Bill, read and sent to the Commons.

May 3. (54.) Subsidy Bill, brought from the Commons.

May 4. (55.)

May 8. (56.) Subsidy Bill, passed.  
Hospitallers Bill, brought from the Commons.

May 10. (57.) Hospitallers Bill, passed.

May 11. (58.) Parliament prorogued for Whitsuntide until May 25.

May 25. (58.)

May 28. (59.)

May 29. (60.)

May 31. (61.)

June 1. (62.)

June 6. (63.) Bill for the abrogation of sanctuaries, read once.

June 4. (64.)

June 5. (65.) Sanctuaries Bill read.

June 7. (66.) Sanctuaries Bill passed.

June 8. (67.) Sanctuaries Bill sent to the Commons.

June 10. (68.) The Earl of Essex, the Vicegerent, at three in the afternoon, is, by the Chancellor and other Lords of the Privy Council, sent to the Tower on a charge of high treason.

June 11. (69.)

June 12. (70.) Bill for payment of tithe, read.

June 14. (71.)

June 15. (72.)

June 17. (73.) Bill of attainder against Cromwell, read.

June 18. (74.)

June 19. (75.) Bill of Cromwell's attainder, read a second and third time "nemine discrepante"; present, 16 Lords Spiritual and 30 Lords Temporal.

June 21. (76.)

June 22. (77.) The Tithes Bill read.

June 25. (78.) The Tithes Bill, read and passed "nemine discrepante."

June 26. (79.)

June 28. (80.)



## NOTES FROM FOREIGN CORRESPONDENCE, &amp;c.

by the archbishop, bishops, doctors now appointed or other persons hereafter to be appointed by his Royal Majesty or else by the whole clergy of England, on doctrine and ceremonies, are to be valid and obeyed as if hereby fully enacted.

[The Resolutions of a body of bishops and doctors, on the subject of the Sacraments, &c., drawn up towards the end of the year 1540, are printed in Burnet, Hist. Ref., i. App. page 201.]

Cap. 38.—Concerning precontracts and degrees of consanguinity.

Cap. 45.—The court of first fruits and tenths.]

## CONTEMPORARY EVIDENCE OF CHRONICLES AND OTHER DOCUMENTS, &amp;c.

The Bill of attainder against Cromwell is printed by Burnet, Hist. Ref. i. App. 187.



## 1540.

## PROCEEDINGS IN CONVOCATION.

[July 6. The King's commission to the archbishops, bishops, deans, archdeacons, and whole clergy, states his will that they should be convoked and come together "in synodum universalem," and declare in writing their opinion on the point laid before them; dated Westminster, July 6.

July 7. The archbishops and clergy, including the bishops of the northern province, the Dean of York, and several archdeacons of the same province, with a large attendance of clergy, met in the Chapter House at Westminster, where the King's letters of commission were read.

The Bishop of Winchester explained the grounds for doubting the validity of the King's marriage.

It was determined by the common consent of the synod that fourteen of the members named should examine the proofs and lay their conclusions before the assembly.

The committee then devolved the examination on five members; after which the synod adjourned to the next day.

The committee of five went to the palace, and received depositions on oath.

July 8. The synod added four names to the larger committee; and was adjourned to the afternoon.

In the afternoon, the whole body, having heard the conclusions of the committee, and treated the merits of the case, agreed unanimously on their answer, and committed the drawing up of it to the eighteen members already acting.

July 9. At 8 a.m. the synod met and after discussion adjourned to 3 p.m., when they subscribed the instrument embodying their decision.]

## PROCEEDINGS IN PARLIAMENT.

June 29. (81.) Bill of attainder against Cromwell, for the crime of heresy and high treason, newly drawn up by the Commons, assented to, with provision annexed, read a second and third time, "*expedita nemine discrepante*," and with it the Lords Bill of attainder, was brought back from the Commons.

July 1. (82.) A Bill to be added to the Act of Six Articles, read.

Tithes Bill sent to the Commons.

July 2. (83.) Bill on forbidden degrees committed to the Archbishop of Canterbury and the Bishops of Durham, Winchester, and Rochester, to be examined and reformed.

July 3. (84.) Marriages Bill passed (*expedita*).

Bill to be added to the Act of Six Articles, passed.

July 5. (85.) Marriages Bill, "*conclusa*."

July 6. (86.) The Chancellor, the Archbishop of Canterbury, the Dukes of Norfolk and Suffolk, the Earl of Southampton, and the Bishop of Durham lay before the Lords doubts as to the validity of the King's marriage with Anne of Cleves.

It was agreed to consult the House of Commons. After this consultation the Lords Temporal and a committee of the Commons went to the King, and, after some circumlocution, addressed him "to allow the legality of the said "marriage to be determined" by the archbishops, bishops, deans, archdeacons, and whole clergy of England now convoked to this Parliament.

The King replied, signifying his will that the cause should be committed to the convocation of the clergy of both provinces, "*in quo ordine "crederet viros esse plurimos tam graves literatos, honestos ac pios, quam uspiam locorum "alibi reperiri possent*"; and ordered letters "patent to be drawn up to this effect.

July 9. (87.)

July 10. (88.) The archbishops and bishops, in the name of the whole clergy, signify that they have found the marriage of the King with Anne of Cleves to be invalid; it was agreed that the archbishops and Bishop of Winchester should go and announce this to the Commons.

July 12. (89.) Bill to dissolve the King's marriage, read.

Bill to be added to the Act of Six Articles, brought up from the Commons, agreed to.

Bill for Tithes, not agreed to, but a new one drawn up, read "*nemine discrepante, expedita et conclusa*."

July 13. (90.) King's Marriage Bill, read a second and third time, and passed.

July 13. (91.) Clerical Subsidy Bill, read.

July 15. (92.) Clerical Subsidy Bill, read. Bill for court of tenths and first fruits, read.

July 16. (93.) Clerical Subsidy Bill, read a third time, and passed.

Bill moderating the Act of Six Articles on the point of incontinency of priests, read.

Bill of court of first fruits, read.

King's Marriage Bill, brought from the Commons, concluded.

July 17. (94.) Bill of court of first fruits, passed.

Bill moderating the Act of Six Articles, passed.

July 19. (95.)

July 20. (96.) Bill concerning the constitution and declaration of the Christian religion according to the pure Gospel of Christ, having been thrice read by the Lords, "*nemine*



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NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.



## 1540.

## PROCEEDINGS IN CONVOCATION.

July 28. The Convocation was dissolved.—Wilkins, Conc. iii. 850.

## 1541.

No Convocation or Parliament.

## 1542.

*Convocation of Canterbury.* Summoned in consequence of a writ of December 10, 1541.

January 20. (1.) Meeting at St. Paul's. After mass a sermon was preached by Dr. Cox, after which the Archbishop and Bishops go to the Chapter House and the clergy are sent to their own house to elect a prolocutor. Thirteen bishops were present.

[The *Convocation of York* met the same day.—Wake, p. 492; Wilkins, Conc. iii. 862.]

January 27. (2.) Mr. Gwent was presented and confirmed as prolocutor. The Archbishop then explained to both Houses that it was the King's intention that they should deliberate on the bad state of religion and on the remedies; and should correct and reform where it was necessary. He informed them that there were many points in the English Bible that required reformation. He desired the Lower House to devote themselves to the examination of the books laid before them, and that skilled persons should be appointed to draw up canons and other laws for the avoiding and coercing of simony. The drawing up of homilies was likewise mooted.

February 3. (3.) After a discussion on the version of the Bible, the Archbishop asked the several members whether the great Bible could be retained without scandal. The majority agreed that it could not. The prolocutor presented a provincial constitution against simony, which the Archbishop deferred for consideration on another day; and the time was spent on the errors found in the Old Testament.

## PROCEEDINGS OF PARLIAMENT.

discrepante," is passed, and sent by the Solicitor General and the Clerk of the Crown to the House of Commons.

July 21. (97.) Bill concerning the Christian religion, brought back.

Bill moderating the Act of Six Articles, brought back.

Clerical Subsidy Bill, brought back.

Bill of court of first fruits, assented to.

July 22. (98.)

July 23. (99.) New Bill on Sanctuaries, brought up from the Commons and passed.

July 24. (100.) The King present; Parliament dissolved.

"Hoc animadvertendum est, quod in hac sessione, cum proceres darent suffragia et dicerent sententias super actibus prædictis ea erat concordia et sententiarum conformitas ut singuli eis et eorum singulis assenserint, nemine discrepante.

"Thomas Le Soulement,

"Clericus Parliamentorum."

*Parliament, 33 Hen. VIII.* Summoned by writ of November 23, 1541.

January 16. Parliament opened in the King's presence; speech by the Chancellor.

January 19. (2.)

January 20. (3.) Thomas Moyle, Speaker elect of the Commons, presented to the King, and confirmed.

January 21. (4.) Bill of attainder against Katharine Howard, &c., read once.

January 23. (5.) Proclamation of the King's style read: "Henricus Octavus Dei Gratia Angliæ, Franciæ et Hiberniæ Rex, fidei defensor, et in terra ecclesiæ Anglicanæ atque Hibernicæ supremum caput."

January 24. (6.)

January 25. (7.)

January 26. (8.)

January 28. (9.) The Chancellor proposes that a number of lords be sent to Queen Katharine Howard. This was agreed, and four lords were named.

January 30. (10.) The Chancellor reports that the lords had deferred their visit to the Queen, and it was agreed to send a committee to the King.

January 31. (11.) The Chancellor reports the result of the visit of the Committee, and the King's advice that the two Houses should be unanimous and show more industry in passing Bills; and should not without consideration reject Bills which they did not at once understand.

February 1. (12.)

February 3. (13.)

February 4. (14.)

February 6. (15.) Bill of attainder against the Queen, read a second time.

Bill for transferring the see of Chester to the province of York, read once.

February 7. (16.) Bill of attainder against the Queen, read again.



## NOTES FROM FOREIGN CORRESPONDENCE, &amp;c.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

July 28. The King marries Katharine Howard; the same day Cromwell is beheaded.

[1541. May 6. Proclamation for the Bible of the largest and greatest volume to be had in every church. —Wilkins, Conc. iii. 856.]

[1541. Portiforium secundum usum Sarum noviter impressum et a plurimis purgatum mendis. In quo nomen Romano pontifici falso ascriptum omittitur una cum aliis quæ Christianissimo nostri regis statuto impugnant. Reprinted in 1544.]

[The Ecclesiastical Statutes of 33 Hen. VIII.:—

Cap. 15.—For the sanctuary of Manchester.

Cap. 21.—The Bill of attainder of Mistress Katharine Howard, late Queen of England, and divers other persons, her accomplices.

Cap. 28.—An Act for the Chancellor of the Duchy of Lancaster and others to have chaplains.

Cap. 29.—The Bill to enable persons late Religious to sue and to be sued.

Cap. 31.—A Bill for the dissevering of the Bishopric of Chester and of the Isle of Man from the jurisdiction of Canterbury to the jurisdiction of York.

Cap. 32.—The Bill for the parish church of Whitegate to be made a parish church of itself, and no part of the parish of Over.]

*Hall's Chronicle*, page 343.—“The 16th day of January the Parliament began, in the which the Lords and Commons assented to desire of the King certain petitions. First, that he would not vex himself with the Queen's offence, and that she and the Lady Rocheford might be attainted by the Parliament, &c.”

At this Parliament the King was proclaimed King of Ireland.



1542.

## PROCEEDINGS IN CONVOCATION.

February 10. (4.) Commission read.

February 13. (5.) After a discussion on the revision of the translation, the prolocutor presented a book containing the passages marked by the Lower House, to be examined by the bishops. Committees were appointed from both Houses to examine the Old and New Testaments respectively; and the Archbishop reminded the clergy to produce on the following Friday their concepts as to the new Statutes to be made against adulterers, perjurers, and blasphemers.

February 17. (6.) The Statute on simony committed to the Bishops of Worcester, Westminster, and Winchester. The question of teaching the people the Paternoster, Ave Maria, Apostles Creed, and Ten Commandments, discussed. The prolocutor came in, and the Bishop of Winchester read a list of Latin words occurring in the Bible, for which suitable English equivalents were to be found, or the Latin words, in their native form, retained.

February 24. (7.) The Bishop of Winchester commissioned to draw up a decree on the leasing of benefices. The Archbishop then treated of the abolition of lights before images, and of the correction of breviaries, missals, and other books; the erasure of the names of the Pope and Thomas Becket; of silk vestments and other ornaments placed on the Statues; and of the teaching the Lord's Prayer, the Apostles Creed, and the Decalogue in English.

The Bishops then advised that the King should be petitioned to put down the plays and comedies which were acted in London to the disgrace and contempt of the Word of God.

The prolocutor introduced the heads of certain decrees against blasphemers, perjurers, and profane swearers. These were read, and it was determined to consult the King upon them.

The prolocutor then carried to the Lower House the injunction of the Upper House, that secrecy should be observed.

March 3. (8.) The Archbishop, by consent of the Bishops, decreed that the use of Sarum should be observed by all and singular clerks in the province of Canterbury in saying the canonical hours, under penalty to be inflicted at the discretion of the ordinary. The Bishops then discussed the payment of rectorial and vicarial tithes, and tithe of underwood, and chose certain chancellors to consider the subject.

March 10. (9.) The Archbishop informed the Synod that it was the King's wish that the translation of the Bible should be examined by both Universities. To this all the Bishops except Ely and St. David's dissented, asserting that the matter belonged rather to the Synod than to the Universities.

A question was raised on the proper form of the salutation "The Lord save thee," or "Our Lord save thee"; all the Bishops except Canterbury, Ely, and St. David's preferred the former form.

"A Bill was also read that came from my Lord Chancellor, intended to be made an Act of Parliament, that chancellors might be married men, and having wives and children might have power to excommunicate and suspend, and to promulge all censures of the Church as priests do; and that they and their registers should have their offices for term of life, for sufficient fees of the ordinaries to find them and their families; and that an officer deputed, having the King's seal or patent, should continue for term of life without change or removing. Which Bill was judged by the Bishops not to be worthy nor convenient to be read in Parliament for the great slander which might thereupon ensue; and therefore my Lord Chancellor to be moved that the said Bill be put to silence. Then the prolocutor exhibited a book for the incorporation of the stationers, written in parchment, to be referred to the King's Majesty."

Drs. Leighton and Wotton exhibited to the Bishop of Winchester a version of the Epistles to the Corinthians made by them.

March 17. (10.) The Archbishop and Bishops read three schedules:—

- (1.) On clandestine marriages.
  - (2.) On the institution of vicars on benefices formerly belonging to monasteries and served by curates.
  - (3.) On the avoiding of simony.
- It was determined to consult the King upon these.

March 24. (11.) Adjournment.

March 28. (12.) Adjournment.

## PROCEEDINGS OF PARLIAMENT.

February 8. (17.) Bill of attainder against the Queen, read a third time.

February 10. (18.) Bill transferring the see of Chester to the province of York, read a second time.

February 11. (19.) The confession of the Queen reported by the Duke of Suffolk; and the Bill of attainder receives the Royal Assent.

February 14. (20.) The Chester Bill, read a third time, and committed to the Bishops of Durham and Winchester.

February 15. (21.)

February 16. (22.)

February 18. (23.)

February 23. (24.)

February 25. (25.)

February 27. (26.)

February 28. (27.) A Bill read on tithes and oblations.

A provision to be added to the See of Chester Bill, read the first time.

March 1. (28.)

March 2. (29.) The provision to be added to the Chester Bill read.

The Bill on tithes, read.

March 4. (30.)

March 6. (31.) Bill concerning offerings made according to custom, read a second time.

March 7. (32.)

March 8. (33.)

March 9. (34.) The Chester (and Man) Bill, brought up from the Commons.

The Bill for Whitegate parish church, brought up from the Commons.

A Bill to enable the late Religious to be sued, brought from the Commons.

March 11. (35.) Bill for the Religious, read a second time.

March 13. (36.)

March 14. (37.)

March 15. (38.) Bill for the Religious, read a third time.

Bill for payment of tithes and offerings, read.

"Hodie lecta est Billa prima vice that laymen may exercise jurisdiction ecclesiastical."

March 16. (39.) Bill for the sanctuary of Manchester, brought up from the Commons, and read the first time.

March 18. (40.) Manchester Sanctuary Bill, read the second time. Bill for payment of synodals and procurations, &c., out of the late monasteries.

March 20. (41.) Whitegate Parish Bill, passed.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

February 12. The Queen beheaded.



## 1542.

## PROCEEDINGS IN CONVOCATION.

March 31. 13.) Adjournment.

April 3. (14.) The Archbishop discussed the question of drawing up homilies.

Dr. Cox, in the name of the Archbishop, suspended all prelates not appearing in the Convocation from celebrating divine service and entering church.

The Convocation was then adjourned to November 4.

November 4. The Convocation was prorogued to January 23, 1543.

## 1543.

1543. *Convocation of Canterbury.*

January 23. Convocation meets, and is prorogued to February 16.

February 16. The two Houses granted a subsidy of 4s. in the pound, to be paid by all clerks in three years.

The prolocutor presented certain homilies composed by certain prelates, which were delivered to Mr. Hussey.

The prolocutor presented a petition touching the drawing up of ecclesiastical laws according to the Statute made in that behalf; and also concerning the more free and just payment of tithes, both greater and personal, by the laity.

February 21. The Archbishop signifies the King's will for the reformation of the service books, by omitting all mention of the Pope and legendary and superstitious matter; the abolition of the commemoration of saints not mentioned in Scripture or by

## PROCEEDINGS OF PARLIAMENT.

March 21. (42.) Bill touching the translation of sanctuaries, brought from the Commons.

March 22. (43.)

March 23. (44.)

March 24. (45.)

March 25. (46.)

March 27. (47.) Bill of Probate, read for the first time.

March 28. (48.)

March 29. (49.) A Bill that certain men may retain chaplains, brought from the Commons, read three times, and passed.

March 30. (50.) Chester Bill.

March 31. (51.)

April 1. (52.) The King present. Parliament prorogued to November 3.

November 3. The Parliament was prorogued to January 22, 1543.

*Parliament, 34 & 35 Hen. VIII.*

January 22. Parliament meets.

January 23. Adjournment.

January 24. Bill concerning offerings in London.

January 25.

January 27.

January 29.

January 30.

January 31.

February 1.

February 3.

February 8.

February 10. A Bill for the uniting of small benefices, read a second time, and committed to the Lord Chief Justice.

February 12.

February 13.

February 14.

February 15. A Bill for uniting small benefices in the City of London, committed to the Bishops of Winchester and Westminster.

February 17.

February 19. Bill for oblations, read the first time.

February 20. Bill for oblations, read a second time, and committed to the Chief Justice.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

[Ecclesiastical Statutes of 34 & 35 Hen. VIII. :—  
Cap. 1.—An Act for the advancement of true religion,  
and for the abolishment of the contrary.

\* \* This is the Statute described in the Lords  
Journals as the Bill for abolishing erroneous books.

Cap. 17.—An Act for the new erected bishops to pay  
their tenths into the Court of First Fruits.

Cap. 28.—An Act for the subsidy of the clergy  
granted of both provinces, Canterbury and York.



1548.

## PROCEEDINGS IN CONVOCATION.

authenticall doctors; the examination of the books was committed to the Bishops of Sarum and Ely, each to be assisted by three of the Lower House. It was likewise ordered that every Sunday and holy day a chapter of the Bible should be read in English by the curate in every church, without exposition.

The Bill of the subsidy was read, and a Statute on tithes exhibited to the Upper House.

February 23. A Bill for a subsidy of 6s. in the pound was exhibited to be presented to the King, with four petitions, viz. :—

1. For the ecclesiastical laws of this realm to be made according to the Statute.

2. For a remedy against the solemnization of clandestine marriages in the Hospital of Bethlehem without Bishopsgate.

3. For the union of small benefices.

4. For order to be made by the King and established by Parliament for the due and true payment of tithes, predial and personal.

March 2. Convocation sits; and in this and the following sessions is employed on the correction of the missals and service books.

March 7. Convocation.

March 9. Convocation.

March 16. The Archbishop ordered, on the King's behalf, that no one should leave Convocation without the King's licence, under pain of His Majesty's indignation.

March 17. Prorogation to April 4.

April 4. There were three sittings before April 20, in which nothing memorable was done.—Wilkins, Conc. iii. 868.

## PROCEEDINGS OF PARLIAMENT.

February 22.

February 24.

February 26.

February 27.

February 28.

March 1.

March 3.

March 5. A Bill for chantry priests to make leases, brought from the Commons, and read once.

A Bill establishing the collegiate church of Southwell, read once.

March 6. A Bill for uniting small benefices, read.

March 7. The Chancellor received into his hands the Bill for uniting small benefices.

March 8. Southwell Bill, read the second time, and sent to the Commons.

The Bill for the clerical subsidy, read the first time.

March 9. The Clerical Subsidy Bill, read the second time.

The Bill for uniting small benefices, read a second time.

March 10. Bill for tithes in London, read a first time.

March 12.

March 13. The Bill for uniting small benefices, read a third time, agreed to, and sent to the Commons.

The Southwell Bill concluded.

March 14.

March 15. The Clerical Subsidy Bill, read a second time, sent to the Commons, and brought back.

Prorogation to April 3.

April 3.

April 4.

April 5.

April 7. Chantry Priests Leases Bill, read a third time.

April 9. A Bill for the true keeping of matrimony, read a second and third time, and committed to the Bishops of Carlisle and Bangor, and to the King's Attorney and Solicitor.

April 10.

April 11.

April 12. A Bill for the new bishops to pay tenths, read once.

April 14.

April 16. Bishops Tenths Bill, read.



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NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.



## 1543.

## PROCEEDINGS IN CONVOCATION.

April 20. The expositions of the Lord's Prayer, and angelic salutation, with the English versions of the same, having been examined by the Archbishop and the Bishops of Winchester, Rochester, and Westminster, were handed to the prolocutor.

April 21. The same course was pursued with the first five commandments of the decalogue.

April 24. The expositions of the last five commandments and the sacraments of baptism and the Eucharist were examined by the Archbishop and the Bishops of Westminster, Sarum, Rochester, and Hereford, and handed to the prolocutor.

April 25. The expositions on the Eucharist, matrimony, penance, orders, confirmation, and extreme unction, having been revised by the same prelates, were delivered to the prolocutor. The Lower House to report their judgment on them at the next sitting.

April 27. The Archbishop, with the Bishops of Winchester, Rochester, and Westminster, examined the exposition of the word Faith, and twelve articles of the Faith, which all the bishops approved.

In the afternoon was read a treatise on justification, on works, and on prayers for the dead, all which were delivered to the prolocutor to be reported on at the next sitting.

April 30. Articles on free will, read and delivered to the prolocutor to be read in the Lower House.

The prolocutor brought them back, with approval and thanks.

May 4. Convocation sits.

May 11.

May 14. Prorogation to November 5.

November 5. Prorogued to January 15.

## 1544.

*Convocation of Canterbury.*

January 15. Convocation meets.

January 18. The Archbishop notified to the clergy that they must elect a new prolocutor in the place of Mr. Gwent.

January 21. Dr. Oliver, Dean of Christ Church, was elected prolocutor.

January 27. Dr. Oliver was admitted prolocutor.

## PROCEEDINGS OF PARLIAMENT.

April 17. Bishops Tenths Bill, sent to the Commons.

April 18. Bill on synodals and procurations, read once.

April 19. Bill on synodals and procurations, read again and agreed to.

April 21. Bill on synodals, sent to the Commons.

April 25.

April 26.

April 28. The Bill on tithes, read a third time.

April 30.

May 1.

May 2.

May 5.

May 7.

May 8. Bishops Tenths Bill, brought from the Commons.

Bill concerning the printing of books, read the first time.

May 9.

May 10. Bill for abolishing erroneous books, read a second time, and a third time, and sent to the Commons.

May 11.

May 12. p.m. The King present. Prorogation to November 3.

November 3. Prorogued to January 14.

*Parliament, 35 Hen. VIII.*

January 14.

January 15.

January 16.

January 17.

January 18. A Bill concerning the examination of the Canon Laws by 32 persons to be named by the King's Majesty, read the first time.

January 19. Canon Law Bill, read a second time. The Bill for the King's style, read once.

January 22. Canon Law Bill, read a third time.

January 23. Bill for the King's style, read a second time.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

The King's Book, A Necessary doctrine and erudition  
for any Christian Man, embodying the revisions of the  
Convocation, was published May 29, 1543.]

[Ecclesiastical Statutes of 35 Hen. VIII. :—

Cap. 1.—An Act concerning the establishment of the  
King's Majesty's succession in the Imperial Crown of  
the realm.

Cap. 3.—The Bill for the King's style.

Cap. 5.—A Bill concerning the Six Articles.

Cap. 16.—A Bill for the examination of Canon Laws  
by 32 persons to be named by the King's Majesty.]



1544.

## PROCEEDINGS IN CONVOCATION.

February 1. The Archbishop and bishops secretly explained to the prolocutor that he must take counsel with some of the more prudent touching the drawing up of a Bill for the payment of personal tithes, according to a Statute to be published in that behalf by the authority of Parliament.

A secret discussion was held on the question of applying to the King for the drawing up of the ecclesiastical laws.

## PROCEEDINGS OF PARLIAMENT.

January 24. "Hodie tertia vice lecta est  
"billa for the examination of the Canon Laws  
"of this realm by 32 persons to be named by  
"the King's Majesty; de qua quidem billa  
"proceres deliberandum censent."

Present 7 Lords Spiritual, 18 Lords Temporal.  
The Bill for the King's style, read a third  
time, and sent to the Commons.

January 25.

January 26.

January 29.

January 30.

January 31.

February 4. The Commons ask for a conference concerning the King's style.

February 5. Style Bill, brought from the Commons.

February 6.

February 7. Succession Bill, read once.

"Item lecta est billa concerning the examination of the Canon Laws of this realm by 32 persons, quæ commissæ est archiepiscopo Cantuariensi et reliquis episcopis."

February 8. Succession Bill, read a second time.

February 9. Succession Bill, read a third time, and sent to the Commons.

February 12. Bill concerning the payment of tithes, read a first time.

February 13. Bill for the King's style, brought from the Commons, and read the first time.

February 14. Bill for the King's style, read a second time.

February 16. Bill for the King's style, read a third time, and concluded.

Succession Bill, brought from the Commons.

February 18.

February 19. Tithes Bill, read a second time.

Bill for remission of the loan, read the first time.

February 20. Loan Remission Bill, read a second time.

February 21. Loan Remission Bill, read a third time.

February 22.

February 24. Canon Law Bill, read a third time, and sent to the Commons.

February 28.

February 29. The Tithes Bill taken into the hands of the Chancellor.

March 1. The Bill concerning the Six Articles, brought from the Commons, read the first time.

Bill of tithes in London, brought from the Commons.

March 3.

March 4. Bill concerning the qualification of the Six Articles, read a second time.

March 5. The same Bill, read a second time and sent to the Commons, with certain words to be put in and out of the same.

March 6. The Canon Law Bill, brought from the Commons, "conclusa."

The Bill for the qualification of the Six Articles, brought from the Commons.

March 7.

March 8.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.



1544.

## PROCEEDINGS IN CONVOCATION.

March. Convocation sat "de tempore in tempus" to March 28, and treated of certain subsidies to be granted to the King in the approaching war.

March 31. Convocation dissolved.

1545.

Convocation of Canterbury summoned by writ of December 9, 1544, to meet January 31, 1545; countermanded by writ of December 22, to meet October 16, 1545, and again countermanded by writ of September 24, to meet November 24, at Eton College, and by writ of October 12, to meet November 24, at St. Paul's.

No proceedings of this session are preserved, but it appears from the Lords Journals that the clerical subsidy had passed the two Houses before December 18.

[The Convocation of York was summoned and countermanded by similar writs to the 24th of November, and prorogued to January 26, 1546. Before that day, however, it was re-summoned to meet December 14, to grant a subsidy, and was continued by prorogations on December 22, December 24, December 31, January 7, 14, 26, February 4, &c., to February 25, 1546, and then to November 24, 1546.—Wake, p. 493 Wilkins, Conc. iii. 877.]

November 24. The York Convocation opened with a Mass of the Holy Ghost and a sermon by Mr. Marshall. Mr. George Palmes was elected and confirmed as prolocutor, and the Convocation then adjourned to January 26, as above.]

## PROCEEDINGS OF PARLIAMENT.

March 10. The Bill for the moderation of the Six Articles, read and agreed to; sent to the Commons.

March 11.

March 12.

March 13.

March 15.

March 17.

March 18. The Bill for the Six Articles, brought from the Commons, and passed.

March 19. Bill for the qualification of the Six Articles, brought from the Commons. A Bill of tithe for wood, brought from the Commons.

March 20.

March 21.

March 22.

March 24.

March 26.

March 27.

March 28.

March 29. Parliament dissolved.

Parliament of 37 Hen. VIII., summoned by writ of December 1, 1544, to meet at Westminster, January 30, 1545; countermanded December 20 to meet October 15, and then to November 23.—(Wake, p. 492.)

November 23. Opened in the King's presence.

November 26.

November 27. A Bill for the abolition of heresies and of certain books infected with false opinions, read once and committed to the Archbishop of Canterbury, Lord Powlet, the Earls of Hertford and Shrewsbury, the Bishops of Ely, Sarum, and Worcester, and Lords Delawar, Morley, and Ferrers.

November 28. The Heresy Bill, read a second time, and after a long examination committed again to the same Lords.

December 1.

December 2. The Heresy Bill, read a third time.

December 3. The Heresy Bill, read a fourth time, and delivered to the King's Solicitor to be put in parchment.

December 5. The Heresy Bill, read a fifth time, and agreed to, "nemine repugnante." Present, 16 Lords Spiritual and 20 Lords Temporal.

December 7. The Heresy Bill, sent to the Commons.

December 9.

December 10.

December 12. Bill concerning tithes in London, committed.

December 14.

December 15. Bill for the dissolution of chantries, hospitals, and free chapels, read and delivered to the King's Attorney.



## NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

[Ecclesiastical Statutes, 37 Hen. VIII. :—  
Cap. 4.—An Act for the dissolution of colleges.  
Cap. 12.—An Act for tithes in London.  
Cap. 17.—An Act that the doctors of the civil law may  
exercise ecclesiastical jurisdiction.  
Cap. 21.—An Act for the union of churches.  
Cap. 24.—The Act for the subsidy granted by the  
clergy.]

[1545. May 6. The King issues his Primer in Latin  
and English.]

*Hall's Chronicle*, p. 864.—“ The 24th day of November  
a Parliament began at Westminster, by authority where-  
of was granted to the King a subsidy of 2s. 8d. of the  
pound of moveable goods, and 4s. of the pound in land,  
to be paid in two year. And all colleges, chantries,  
and hospitals were committed to the King's order,  
during his life, to alter and transpose, which his Grace,  
at the prorogation of the Parliament, promised to do to  
the glory of God and the common profit of the realm ”



## 1545.

## PROCEEDINGS IN CONVOCATION.

## 1546.

November 5. Convocation prorogued to January 15.

November 24. The Convocation of York was prorogued to January 15.

## 1547.

*Convocation of Canterbury.*

January 15. No records of this session of Convocation are preserved.

January 15. *Convocation of York.*—No records.

## PROCEEDINGS OF PARLIAMENT.

December 16. Chantries Bill, read a second time, and ordered to be ingrossed.

A Bill allowing the Knights of St. John to marry, read the first time.

A Bill "quod doctores juris civilis nupti possunt fungi jurisdictione ecclesiastica," read once, and then read again, and ordered to be ingrossed.

December 17. The Bill allowing married doctors to exercise ecclesiastical jurisdiction, read a third time and agreed to.

Chantries Bill, "commune omnium procerum consensu comprobata est."

Both Bills sent to the Commons.

Bill for tithes in London, read a second time; and p. m. a third time, the Earl of Sussex alone opposing.

Bill allowing the Knights of St. John to marry, read a third time, "quam omnes proceres comprobavere."

Both Bills sent to the Commons.

December 18. The Bill of the clerical subsidy, read.

December 19.

December 21. The Bill of the clerical subsidy, read a second time, approved, and handed to Mr. Rede and Mr. Martin, to be taken to the Commons.

December 22. Bill for marriage of Knights of St. John, brought from the Commons, and passed.

Bill for married doctors of law, brought from the Commons and passed.

Bill of clerical subsidy, brought from the Commons, and passed.

December 23. Bill for the union of churches, brought from the Commons, and read three times, and approved, the Earl of Sussex alone opposing.

The Chantries Bill, brought from the Commons, and passed.

The London Tithes Bill, brought from the Commons, and passed.

December 24. The King present. The Parliament was prorogued to November 4th, 1546.

November 4th. The Chancellor prorogued the Parliament to the 14th of January 1547.

*Parliament, 38 Hen. VIII.*

January 14. Meeting and adjournment.

January 15.

January 17.

January 18. [Bill for attainder of the Duke of Norfolk and Earl of Surrey, read once.]

January 19. [Bill of attainder, read a second time, and ordered to be ingrossed.]

January 20. [Bill of attainder, read a third time, concluded, and sent to the Commons.]

January 22.

January 24. [Bill of attainder, brought up from the Commons, and passed.]

January 25

January 26.

January 27. The Royal Assent given by Commission to the Bill of attainder.

January 29.

January 31. The Chancellor reports that the King died on Friday January 28; and that by his death the present Parliament was dissolved.



NOTES FROM FOREIGN CORRESPONDENCE.

CONTEMPORARY EVIDENCE OF CHRONICLES AND  
OTHER DOCUMENTS, &c.

*Hall's Chronicle*, page 864, gives the King's Speech  
at the prorogation.

No Statutes passed in this Parliament.



## HISTORICAL APPENDIX (V.).

## A Memorandum drawn up from the Journals of the Lords and Commons, showing the occasions on which the Convocations are formally referred to, in other than cases of Subsidies.

THE following pages contain a collection of extracts and notes from the journals of the two Houses of Parliament, illustrative of the relation between that body and the Convocations, during the period which extends from the death of Henry VIII. to the silencing of Convocation in 1717. This collection is the result of a very careful examination of the journals, and is believed to contain every passage of any importance in which the Convocations are mentioned, except the formal reports of subsidies. Besides these extracts, there are notes on the Ecclesiastical business brought forward, from time to time, in Parliament, which may save the trouble of further research in the journals on the main points with which our Commission deals.

The journals of the House of Lords begin in 1509, those of the Commons in 1547. Such illustrations of the matters before us as are furnished by the journals of 1529 to 1547 will be found in a previous memorandum presented to the Commission. It has not been thought necessary to go further back, or to cite the earlier Rolls of Parliament, chiefly because the Submission of the clergy in 1532 and the Statute of Submission of 1534 materially altered the relations in which the Convocations stood to the Crown, and so incidentally their relations to Parliament also. I venture, however, to prefix, by way of introduction, a few remarks on the history of the subject which are almost necessary for the interpretation of the extracts that follow.

The relations between the Convocations and the Parliaments in pre-reformation times were never cordial, and were at some periods hostile. This attitude dates from the early days of the struggles between the king and the episcopate, and is illustrated by letters of prohibition issued by John, Henry III., and Edward I. in which the archbishops are enjoined not to do anything in their ecclesiastical assemblies that may prejudice the king or the kingdom. After the attempt made by Edward I., to incorporate a house of clergy into the Parliament itself, had been defeated by the persistent opposition of the clergy, the power of taxing spiritualities and the temporalities annexed to them was permanently secured to the two Convocations; and thereby they obtained a hold on the royal and national necessities which secured to them frequent sessions and a somewhat grudging recognition of other constitutional powers. As certain departments of jurisdiction, which would now be deemed entirely secular, especially on matters of probate, administration, marriage, and the enforcement of tithes, were subject to ecclesiastical judicature, and as many of the archbishops, with the aid of their Convocations, laboured to amplify their authority, a still greater jealousy sprang up in the 14th century, especially in the House of Commons, the spiritual lords being a majority in the Upper House. It is to jealousy in these debateable regions of temporal and spiritual jurisdiction that we must ascribe the petition of the Commons in 1344, which prays that no petition made by the clergy to the disadvantage or damage of the magnates or Commons may be granted without examination by the king and council; and likewise some of the complicated action which marks the early proceedings against the Lollards. Under the Lancastrian kings in the 15th century this jealousy is less apparent, probably, however, because the kings were in very close alliance with the clergy, whilst the anti-clerical action was connected in Parliament with political Lollardy, and out of Parliament with the rivalry between the common lawyers, now growing in importance, on the one hand, and the civilians and canonists on the other. The petitions of Convocation in 1439 and 1447 against the aggressions of the common lawyers, and the interposition of Henry VI. to prevent the Commons from interference in ecclesiastical taxation, do not seem to have had any connexion with the peculiar constitutional jealousy which had existed earlier and reappears later. The same may be said generally of the reigns of the York kings and of Henry VII. In the earlier years of Henry VIII. there was one important struggle between these bodies, in relation to the Standish case in 1515, on which the following note is made in the Lords' Journals, by John Taylor, who was at the same time Clerk of the Parliaments and Prolocutor of the Lower House of the Convocation of Canterbury: "*in hoc parlamento et convocatione periculosissimæ seditioes exortæ sunt inter clerum et sæcularem potestatem super libertatibus ecclesiasticis, quodam fratre minore nomine Standishe "omnium malorum ministro ac stimulante."*" This quarrel had, however, its origin in a question of clerical privilege, and had no connexion with the constitutional or customary authority of Convocation.

The transactions of the later and more critical years of Henry VIII. are the subject of another memorandum, the general features of which need not be recapitulated here. It is enough to remark that Henry used the jealousy of the Commons towards Convocation as the fulcrum for his first proceedings against the clergy, but that he showed no signs of an intention to subject the ecclesiastical authority, which he thereby acquired, to the arbitration of Parliament. On certain matters he demanded and received the aid of Parliament, but his ideal policy was that of an ecclesiastical despotism operating through the framework of the old convocation system.

It is necessary to speak a little more circumstantially of the reign of Edward VI. The young king and his ministers entertained ideas which were in strong contrast with those of Henry VIII. and Elizabeth in all points except the absolute authority of the Crown, and which, if they had been fully developed, must have ended in the destruction of the older ecclesiastical system. Edward's bishops not only were obliged to take out commissions for the exercise of their office, but held their sees during good behaviour, and after the Act 1 Edw. 6. c. 2. exercised their jurisdiction only under the king, their writs running in his name and their seals bearing the royal arms. The shadow of capitular election was legally abolished, and the king himself entertained the idea of limiting the exercise of episcopal jurisdiction to such only of the bishops as he might deem worthy of the charge. Whilst this was the case with the episcopate, it might be safely assumed that as little power as possible would be entrusted to the Lower House of Convocation, which to a great extent consisted of men who were indisposed to the new policy and kept silence in hopes of a possible reaction. It is, therefore, important to observe that the first Prayer Book of Edward VI. was accepted by the Convocation, and that the concession of the cup to the laity and of the right of marriage to the clergy, which were legalised by Acts of this first and second Parliaments, were, as principles, accepted in the Convocation. The lawfulness of communion in



both kinds was voted in Convocation on the 30th of November 1547 during the progress of the bill that authorised it through the House of Lords, and before it was introduced into the Commons; the marriage of priests was voted in Convocation on the 17th of December 1547, and proposed to the Parliament early in 1549. The petition of the Lower House of Convocation of November 22, 1547, includes also a prayer for further proceedings in reform of ecclesiastical law, which were the subject of a later statute; and likewise a request "that the work of the bishops and others who by command of Convocation were engaged in the examination, reform, and publication of Divine service, might be submitted to the House." They also petitioned that the Lower House of Convocation might be annexed to the House of Commons, in a way which shows that the attendance of the clerical proctors, under the *Præmunientes* clause, in Parliament, was as a tradition not entirely fallen out of memory.

The participation of Convocation in the later proceedings of the reign is problematical. The Ordinal of 1550 was drawn up by six prelates and six other learned men of the realm appointed by the King, and was authorized by Parliament, 3 & 4 Edw. 6. c. 12.; nothing is known of the proceedings of Convocation in the matter. The second Prayer Book of Edward VI., the Catechism published by Cranmer, the Forty-two Articles of Religion, and the *Reformatio Legum*, all of which belong to the years 1551–1553, were the work of small bodies of divines, lawyers, and scholars, who had a certain although vague relation to the episcopate and the Convocation. The body which revised the Prayer Book is entitled, by John ab Ulmis in a letter to Bullinger, a Convocation, and may possibly have been a sub-committee of Convocation acting under the King's orders. The Articles were issued as agreed upon in Synod, from which statement possibly a similar conclusion may be drawn; the claim to synodical authority for Cranmer's Catechism was made a formal charge against him in his troubles during the following reign; and the *Reformatio Legum*, although petitioned for by Convocation, was the work of a small number of scholars named by the King by virtue of an Act of Parliament. Of the Convocation in which these matters may have been transacted or approved, and which sat from January 24th to April 16th 1552, no minutes have been preserved. (*See, however, the letters of John ab Ulmis, of January 10th and March 1st, 1552.*)

It is unnecessary and useless to refer in detail to the history of the reign of Mary in this matter. In her first Parliament she swept away the ecclesiastical legislation of her brother, and in her second that of her father. Under her the Convocations, like the Parliaments, did their best to restore the earlier state of things so far as it was compatible with the changed distribution of property, and the rapidly changing attitude of England towards the ideas of the Reformation. On Mary's death Elizabeth revived by the legislation of her first Parliament large portions of the ecclesiastical policy of Henry VIII. and Edward VI., but by no means all. The anti-episcopal statutes of Edward VI. were allowed to remain repealed, and in assuming the exercise of the full authority asserted by Henry VIII. the Queen abstained from taking the title of supreme head on earth of the Church of England, and published an explanation of the rights she claimed which left room for liberal interpretation, if the conflicting parties would avail themselves of it. The following pages afford some material for brief conclusions on the special point before us.

After her assumption of the supreme power, and the recognition of it by Parliament in the first statute of the reign, Elizabeth retained the exercise of ecclesiastical authority under her own hands, and showed particular care to forbid the Parliament to interfere with the Church. In the restoration of the service book of Edward VI. she employed the Parliament, the Convocation being hostile to the change, but from the moment she had secured the support of the recruited body of bishops, and was able to collect a Convocation of clergy willing to accept the Prayer Book, she did her utmost to prevent the Parliament from meddling with the ecclesiastical laws. Her ecclesiastical supremacy was to be exercised according to the idea which she inherited from her father, in legislation by the canons of the Convocation, and in judicature by the Court of High Commission. Hence the records of her reign furnish no examples of co-operation between Convocation and Parliament. The House of Commons was restrained from Puritanic innovation by her summary prohibitions; the Convocations under her licence passed Canons to which she allowed or refused authority. The few Acts that passed the Parliaments were such as constitutionally demanded authorisation from the estates as affecting temporal interests or the exercise of coercive power.

James I. in the early part of his reign attempted to effect co-operation between the Convocation and the Parliament, but was defeated by the resolution of the House of Commons not to make a new precedent. That House was largely leavened with Puritanic ideas, and in the first half of the reign these showed themselves in a great number of proposals for ecclesiastical change. Many bills passed both Houses, and more the House of Commons, which conflicted with the most moderate statement of ecclesiastical claims, but they do not appear in the statute book, either having been refused the royal assent, or having never been presented to the King. The Canons of 1604 were regarded by the Commons with great dislike, and no serious attempt was ever made to impose them on the laity.

Under Charles I. no attempt was made to secure joint working: the King was seldom on good terms with the Parliament; the Convocation, by granting a subsidy without the confirmation of Parliament, and by passing Canons with the royal licence in 1640, drew down upon itself the condemnation of both Lords and Commons.

After the Restoration the Convocations recovered their constitutional power of granting subsidies which required Parliamentary confirmation, and exercised that power until, in 1665, it was tacitly surrendered. Their share in the revision of the Book of Common Prayer, authorised and enforced by the Act of Uniformity, was acquiesced in by both Houses: the Lords returned thanks for the labour spent upon it, the Commons, who were more inclined than the Lords to a severe enforcement of conformity, showed some vestige of their immemorial jealousy by resolving that, although they did not care to exercise it, they had a right to review the amendments introduced into the Liturgy. The journals, as extracted in this memorandum, afford sufficient illustration of the proceedings taken in this most important matter.

The few extracts which belong to the later years of Charles II., and the following reigns, are chiefly important as showing the good terms on which the Convocations and Parliament stood; the House of Lords on several occasions and the House of Commons on one special occasion, in 1689, urging the summoning of Convocations for the securing of the established religion, and the House of Commons on two occasions professing its willingness to maintain the constitutional rights of the Lower House. It is in the reign of Anne that for the first time since the Reformation we find any direct communication between the Commons and the Lower House of Convocation.

As the relations of Convocation to the Crown and Parliament varied so widely during these reigns, it is not easy peremptorily to determine on what principle their respective action was applied to ecclesiastical legislation. A distinction may be drawn between matters of discipline, ritual, and doctrine; between matters of clerical and lay obligation; between questions in which property was involved, and questions in which it was not involved; and between those which involved or did not involve recourse to Parliament for authorization of



coercive action. But it is rash to rely upon any formal definition on these points, especially when there is no evidence that definite theories were current among the actors at the time, or were ever consistently and consciously acted on. It is certain that Elizabeth would have regarded an attack by the Commons on Church judicature with as much dislike as an attack upon doctrine; it is also clear that the Commons regarded themselves as competent to enforce changes in doctrine and ritual. The result was that no important measures were passed on either subject. Of the less important measures, some were dealt with by canon, some by statute; but the canons remained in a great degree a dead letter, and the statutes were strictly confined to matters of absolute necessity. The same result followed from the somewhat altered policy of James I. and Charles I. The relation created or restored at the Restoration was more reasonable, and might have worked more beneficially than it did, had it not been for other causes and jealousies, quite distinct from those existing between the Parliament and Convocation, which culminated in the suspension of the latter for nearly a century and a half.

It may be added that within the period to which these extracts refer, with the single exception of the complimentary messages of Queen Anne's reign, all negotiations between Parliament and Convocation seem to have been conducted through the Archbishops in the House of Lords. The subsidies were reported by the archbishop or senior bishop of the province granting the money, and the Bills after being confirmed by the Lords, were sent down to the Commons. The negotiation on the Prayer Book in 1662 was likewise conducted by the bishops and the House of Lords, although it was initiated by a royal letter. In case of direct dealing between the Crown and the Convocation there was probably an occasional action of the Chancellor or some other officer of State as Royal Commissioner, but generally the archbishop laid the will of the Crown before the Convocation, and reported, either alone or with a small number of his brethren, the answers or petitions of Convocation to the Crown.

In conclusion I may state that, although there are in the records of Convocation some other materials which incidentally illustrate the subject of this memorandum, I have thought it best to confine myself to the Parliamentary records, only using the synodal documents where they helped to determine a date or contain a distinct reference to Parliament.

WILLIAM STUBBS, D.D.

May 10, 1882.

#### 1549, 3 Edw. VI., Nov. 4.

"Hodie assignatus est dies Veneris pro conventu episcoporum et aliorum ejus ordinis ecclesiasticorum habendo in ecclesia Divi Pauli."—*Lords' Journals*, i. 355.

#### 1553, 1 Mary, October 12.

"Mr. Secretary Bourne, Sir R. Southwell, Mr. Tregonwell, Mr. Mershe, Mr. Story, Mr. Gosnolde, to inquire for Alex. Nowell, Burgess of Loo, in Cornwall, prebend of Westminster, if he may be of this House."

Oct. 13. "It is declared by the Commissioners that Alexander Nowell, being prebendary in Westminster, and thereby having voice in the Convocation House, cannot be a member of this House, and so agreed by the House; and the Queen's writ to be directed for another Burgess in that place."—*Commons' Journals*, i. 27.

#### 1559, 1 Elizabeth, April 3.

but for that this day was appointed to have disputation before the Council and Lords in Westminster Quire between the bishops and Mr. Horne, Mr. Cocks, and other Englishmen that came from Geneva; and for that it was met that they of this House should be there present to hear, this Court was continued until the morrow following.—*Commons' Journals*, i. 59.

#### 1571, 13 Elizabeth, April 6.

Upon a motion for uniformity of religion, and the mention of certain bills drawn for that purpose, the last Parliament, and for redress of sundry defections in these matters, a Committee is by the House appointed.

April 7. The bills concerning religion were read and the Bill A delivered to the Commissioners, and the residue read and appointed to remain in the House; and this not to stand for any reading.

Upon a motion by the Committees for matters of religion, it is ordered that Mr. Grymston and Mr. Strikeland may move the Lords of the Clergy, to know their pleasures concerning the motions to be to them made in matters of religion.—*Commons' Journals*, i. 83; *Dewes*, pp. 156–159.

#### 1571, April 10.

Touching matters of religion, Mr. Mounson bringeth report that the Bishops prayed to have the Lords moved by this House to assign a committee to confer with this House, and thereupon it is ordered presently that the same Commissioners do immediately go to the Lords with this message, to know their pleasures for appointing some to confer about the book of doctrine. Mr. Treasurer returneth report that the Lord Keeper hath answered he will open it to the Lords.—*Commons' Journals*, i. 84.

Sir Richard Rede and Mr. Doctor Yale do bring answer to the message, viz., that the Lords have appointed 20, whereof 10 of the clergy and ten of the temporality to meet at two of the clock this afternoon, in the Star Chamber. (12 names added to the former committee.)—*Ib.*; *Dewes*, p. 160.

[The appointment of the Committee of the Lords for the Conference is given in the *Lords' Journals*, April 10.]



1571, April 14.

1. The Bill for reformation of the Book of Common Prayer. The first reading; and after many arguments it is, upon the question, agreed that petition be made by this House unto the Queen's Majesty for her licence and privy to proceed in this Bill before it be any further dealt in.—*Commons' Journals*, i. 84; *Dewes*, p. 166.

May 1.

Mr. Serjeant Barram and Mr. Attorney-General do desire from the Lords that a convenient number of this House be sent presently unto their Lordships for answer touching the Articles of Religion, whereupon my Lord Deputy of Ireland, Mr. Treasurer, and divers others were sent for that purpose . . . and afterwards returned answer from the Lords that the Queen's Majesty, having been made privy to the said Articles, liketh well of them and mindeth to publish them and have them executed by the Bishops, by direction of Her Highness's Regal Authority of Supremacy of the Church of England, and not to have the same dealt in by Parliament.—*Commons' Journal*, i. 87; *Dewes*, p. 180.

[On the 4th of May the Convocation agreed that when the Book of Articles touching doctrine shall be fully agreed on, it shall be put in print. Another debate on the subject was held on the 11th of May, and the Convocation was dissolved on the 30th. The Bill for ministers to be of sound religion, by which subscription was enforced, was brought up to the Lords from the Commons on the 3rd of May, and read May 7, May 10 (committed), and May 21 (concluded). The same day it was brought down to the Commons; on the 23rd it was returned to the Lords and passed. This is 13 Eliz., c. 12.]

1572, 14 Elizabeth.

[May 17.—A Bill concerning dispensations for rites and ceremonies passes the first reading in the Commons; May 19, read a second time; May 20, read a third time and referred to a committee. May 21 a new Bill on the same subject read a first time.]

May 22.

Upon declaration made unto this House by Mr. Speaker, from the Queen's Majesty, that her Highness's pleasure is that from henceforth no Bills concerning religion shall be preferred or received into this House unless the same should be first considered and liked by the clergy, and further that Her Majesty's pleasure is to see the two last Bills read in this House touching rites and ceremonies, it is ordered that the same Bills shall be delivered unto Her Majesty.—*Commons Journals*, i. 97. *Dewes*, p. 213.

May 23.

Mr. Treasurer reporteth to the House the delivery of the two Bills of Rites and Ceremonies to Her Majesty, together with the humble request of this House most humbly to beseech her Highness not to conceive ill opinion of this House, if it so were that Her Majesty should not like well of the said Bills or of the parties that preferred them, and declared further that Her Majesty seemed utterly to mislike of the first Bill and of him that brought the same into the House, and that her Highness's express will and pleasure was that no preacher or minister should be impeached or indicted or otherwise molested or troubled as the preamble of the said Bill did purport, adding these comfortable words further that her Majesty as Defender of the Faith will aid and maintain all good Protestants to the discouraging of all Papists.—*Commons' Journals*, i. 97. *Dewes*, p. 214.

[Peter Wentworth, representative of Tregony, in a speech reported on the 8th of February 1576, mentions the message brought down by the Speaker in the previous session "that we should not deal in any matters of religion, but first to receive from the bishops." For his strong language on the occasion he was on the following day sent to the Tower, from which he was released on the 20th of March following.]

1576, 18 Elizabeth, Feb. 29.

The petition and motions made touching reformation of discipline in the Church:—All the Privy Council of this House . . . to meet this afternoon in the Chequer Chamber between two and three of the clock, and agree touching the nature of the petition to be made unto the Queen's Majesty upon the motions for reformation of discipline in the Church, and that, the nature of the petition so agreed upon, then those of the Privy Council only to move the same to the Lords of the Privy Council after report first made thereof to this House.—*Commons' Journal*, i. 109. *Dewes*, p. 251.

March 2.

[Mr. Treasurer reports that the Committee has met and agreed on a bill which is presented and read and sent to be considered by the Chancellor of the Exchequer and others.]

March 9.

Mr. Chancellor of the Exchequer touching the petition for reformation of discipline in the Church doth bring word from the Lords that their Lordships, having moved the Queen's Majesty touching the said petition, Her Highness answered their Lordships that Her Majesty, before the Parliament, had a care to provide in that case of her own disposition, and at the beginning of this session Her Highness had conference therein with some of the bishops and gave them in charge to see due reformation thereof; wherein, as Her Majesty thinketh, they will have good consideration according unto her pleasure and express commandment in that behalf; so did Her Highness most graciously and honourably declare further that if the said bishops should neglect or omit their duties therein, then Her Majesty by her supreme power and authority over the Church of England would speedily see such good redress therein as might satisfy the expectation of her loving subjects to their good contentation, which message and report was most thankfully and joyfully received by the whole House with one accord.—*Commons' Journal*, i. 113. *Dewes*, p. 257.

1581, 23 Elizabeth, February 8.

[The Commons request the Lords to have conference respecting matters of religion; the Lords appoint 18 of their own body, and the conference is held the same day, and again on the 14th, and other days. On the 18th a Bill for religion, which had been discussed in the conference was reported in an amended form by the Chancellor of the Exchequer to the House of Commons, and read a first time.]

March 3.

After sundry motions and arguments touching some reformations in matters of religion contained in the petitions exhibited unto this House the last session of this present Parliament, it is at last resolved by the whole House that Mr. Vice-Chamberlain, both Mr. Secretaries, and Mr. Chancellor of the Exchequer shall, by



order of this House, and in the name of this whole House, move the Lords of the Clergy to continue unto her Majesty the prosecution of the purposes of reformation which they the said Mr. Vice-Chamberlain, Mr. Secretaries, and Mr. Chancellor of the Exchequer, had before of themselves and not as from this House moved unto their Lordships: and also shall further impart unto their Lordships the earnest desire of this House for reformation of such other griefs contained likewise in the said petitions as have been touched this day in the said motions and arguments as to their good wisdoms shall seem meet; and then upon a motion made, by Mr. Speaker, it was further agreed that all the said speeches, motions, and arguments should by the whole House be deemed to proceed of good and godly zeal without any evil intent or meaning, and so and for such to be construed and reported accordingly, and not otherwise or in any other manner.—*Commons' Journals*, i. 130; *Dewes*, 302.

[March 7.

[The Chancellor of the Exchequer reports that he and the other committees have conferred with some of the bishops on the points to be reformed, namely, the great number of unlearned and unable ministers, the great abuse of excommunication for every matter of small moment; the commutation of penance, and the great multitude of dispensations and pluralities, and other things very hurtful to the Church. The bishops agreed to join in a petition to the Queen, who graciously replied that she would urge on the Clergy to the requisite reforms. Whereupon the House passed a vote of thanks to the Queen, and commissioned the Speaker to put her in remembrance to execute her promise, whenever it should seem to him most meet and convenient.]—*Commons' Journals*, i. 131; *Dewes*, p. 303.

1584, 27 Elizabeth. December 18.

[A Bill touching appeals out of the Ecclesiastical Courts was read a second time in the Commons and committed.—*Dewes*, p. 341.]

1585, 27 Elizabeth. February 13.

[A Bill on pluralities was read a second time in the Commons and committed.—*Dewes*, p. 349.]

February 25.

[The Petition of the Commons touching the liberty of Godly preachers, proposed to the House of Lords, and containing 16 articles that required reform, was returned to the Commons with answers to the several articles; whereupon it was at last agreed that] “first the former Committees calling to them such other grave members of this House, learned in Divinity and in the Common Laws of this realm, and also in Canon Law, as they shall think good, shall confer together in the Exchequer Chamber to-morrow, in the afternoon, touching the answer of the Lords unto this House concerning the petitions of this House presented to their Lordships, and after such conference and consideration had of the same answer, then to resolve for further proceeding therein as then shall be thought meetest by this House.”—*Dewes*, p. 360.

March 19.

[A Bill for the better execution of Stat. 13 Eliz. c. 12, read a second time and committed.]—*Dewes*, p. 370.

[This Bill was brought to the Lords and read once, March 23, *ib.* 326.—*Lords' Journals*, ii. 105.]

March 22.

[Bill against excessive fees and Taxations in Ecclesiastical Courts, read a second time and committed, in the Commons.] *Dewes*, p. 371.

1587, 29 Elizabeth, Feb. 27.

“The same day Mr. Cope, first using some speeches touching the necessity of a learned ministry, and the amendment of things amiss in the Ecclesiastical Estate, offered to the House a Bill and a book written, the Bill containing a petition that it might be enacted that all laws now in force touching Ecclesiastical Government should be void, and that it might be enacted that that book of Common Prayer now offered, and none other, might be received into the Church to be used. The book contained the form of Prayer and Administration of Sacraments, with divers rites and ceremonies to be used in the Church, and desired that the book might be read. Whereupon Mr. Speaker in effect used this speech: For that her Majesty before this time had commanded the House not to meddle with this matter, and that her Majesty had promised to take order in those causes, he doubted not but to the good satisfaction of all her people; he desired that it would please them to spare the reading of it. Notwithstanding the House desired the reading of it. Whereupon Mr. Speaker willed the Clerk to read it. And the Court being ready to read it, Mr. Dalton made a motion against the reading of it, saying that it was not meet to be read; and that it did appoint a new form of administration of the Sacraments and Ceremonies of the Church to the discredit of the book of Common Prayer and of the whole State, and thought that this dealing would bring her Majesty's indignation against the House thus to enterprise the dealing with those things which her Majesty especially had taken into her own charge and direction. Whereupon Mr. Lewkenor spoke, showing the necessity of preaching and of a learned ministry, and thought it very fit that the petition and book should be read. To this purpose spake Mr. Hurleston and Mr. Bainbrigg, and so the time being passed the House brake up and the petition nor book read. This done, her Majesty sent to Mr. Speaker as well for this petition and book, as for that other petition and book for the like effect that was delivered the last Session of Parliament, which Mr. Speaker sent to Her Majesty.”—*Dewes*, p. 410.

Feb. 28.

Her Majesty sent for Mr. Speaker by reason whereof the House did not sit.

Mar. 1.

On Wednesday, the 1st of March, Mr. Wentworth delivered unto Mr. Speaker certain articles which contained questions touching the liberties of the House, and to some he was ready to answer, and desired they might be read. Mr. Speaker required him to spare his motion until Her Majesty's pleasure was further known touching the petition and book lately delivered into the House. But Mr. Wentworth would not be so satisfied, but required his articles might be read. Then Mr. Speaker said he would first peruse them and then do that were fit.

[Mr. Wentworth's speech is given by *Dewes*, p. 411. On the 2nd of March Cope, Lewknor, Hurlston, and Bainbrigg were sent to the Tower. On the 4th Sir John Higham moved for a petition for their release. Mr. Vice-Chamberlain argued that the House should wait, the Queen having “for divers good causes best known to herself, thought fit to suppress the book and petition without any further examination thereof.”]—*Dewes*, pp. 411, 412.



1589, Feb. 25.

Mr. Dampont having mooted the question of ecclesiastical proceedings, offering some particulars in writing. "Mr. Secretary Woolley putteth the House in remembrance of Her Majesty's express inhibition delivered to this House by the mouth of the Lord Chancellor at the beginning of this Session of Parliament, touching any dealing with ecclesiastical causes, and showed for his own part that he thinketh that this House should incur contempt to Her Highness if, contrary to that inhibition, they should deal in the said matter last moved. Whereupon the said matter in writing was then received, but not then read at all, and was afterwards, without anything done more therein, delivered back again by Mr. Speaker unto the said Mr. Dampont upon Monday, March 17."—*Dewes*, p. 438.

March 5.

[Bill on Pluralities read a second time.]

1593, 35 Elizabeth, Feb. 27.

[Mr. Morrice presented Bills on the proceedings in Ecclesiastical Courts; which were opposed by Mr. Dalton and Sir John Woolley on the ground of the Queen's inhibition against meddling with ecclesiastical matters. Other members supported the proposals. Sir Robert Cecil asserted that] "Her Majesty had straitly forbidden to  
" meddle in such cases; yet, not forgetting the cause, she had in her excellent wisdom cared and  
" pretended that a redress should be had of things that are amiss; to which end Her Majesty  
" before the Parliament summoned had directed her letters to the archbishops to certify her."

Feb. 28.

[The Speaker reported that he had been sent for by the Queen, who had given him a message for the House, explaining the causes for holding the Parliament, and adding:] "Her Majesty's pleasure being then delivered unto  
" us by the Lord Keeper, it was not meant that we should meddle with causes of State or causes  
" ecclesiastical," and because the words then spoken by my Lord Keeper are not now perhaps  
" well remembered, or some be now here that were not then present, Her Majesty's present charge  
" and express commandment is that no Bill touching the said matters of State or reformation in  
" causes ecclesiastical be exhibited. And upon my allegiance I am commanded, if any such Bill be  
" exhibited, not to read it."—*Dewes*, pp. 474-479.

1597, 39 Elizabeth, Nov. 10.

"Mr. Walgrave moved, touching the abuses of licences for marriages granted by ecclesiastical persons, and prayeth consideration may be had for reformation thereof by this House."—*Dewes*, p. 555.

Nov. 11.

[The same abuses, and the abuses of probate discussed, and a committee formed on clandestine marriages; further proceedings under the Queen's orders on this subject, November 14 and November 16. The same subjects were referred to the Convocation November 18; the result being parts of the Canons of 1597.—*Cardwell*, *Synodalia*, i. 152, ii. 579.]

Nov. 14.

[Sir John Fortescue, Chancellor of the Exchequer, brought the Queen's message to the House commanding the Commons] "to take information of the grievances [in the matter of incestuous marriages] in particular  
" of the members of this House, that her Highness having certain notice thereof may thereupon  
" give order for the due punishment and redress accordingly."—*Dewes*, p. 556.

Nov. 16.

"Note, that although Her Majesty had been formerly exceeding unwilling, and opposed to all manner of innovations in ecclesiastical government, yet understanding at this Parliament of divers gross and great abuses therein, she had on Monday, November 14 foregoing, not only given leave and liberty to the House of Commons to treat thereof, but also had encouraged them to proceed in the reformation thereof by a message brought into the said House by Sir John Fortescue, Chancellor of the Exchequer."—*Ib.* 557, 558.

Nov. 22.

[A Bill on the subject was delivered to the Speaker, *ib.* p. 562.]

Nov. 28.

[A Bill on excessive fees of ecclesiastical judges delivered to the Speaker, *ib.* p. 565. See the Canon of 1597; *Cardwell*, *Synod.* i. 157.]

Dec. 3.

[Mr. Finch presented a Bill for modifying the Act of Uniformity and the Statute 13 Eliz. c. 12; *ib.* 567.]

1601, 43 Elizabeth, Nov. 16.

[A Bill on Pluralities was read a second time after a long debate, and committed.—*Dewes*, p. 641.]

Nov. 17.

[A Bill for imposing temporal penalties on adultery debated; Sergeant Harries opposed on the ground that, as the fact would have to be determined in the Ecclesiastical Court, it was not reason that judges ecclesiastical should determine of laymen's inheritances, and the Bill was rejected; *ib.* 641.]

1604, 2 James I., March 23.

[Sir Rob. Wroth proposes the confirmation of the Book of Common Prayer; committee named.

March 26.

A select sub-committee, concerning the Confirmation of the Book of Common Prayer to peruse the book newly imprinted, capitulate the alterations and report them with their own opinions.—*Commons' Journals*, i. 151, 153; *cf.* p. 169.

April 13.

The Bishop of London in Convocation appoints a committee of bishops to confer with the Speaker and others of the House of Commons about complaints brought before them against the clergy; and that the said bishops should also tell the said Speaker and Commons of grievances put upon the clergy by the laity.—*Cardwell*, *Synodalia* ii. 584.]



April 16.

"Mr. Speaker publisheth to the House that he understood by message from His Majesty that he had taken knowledge of the complaints made against the proceedings of Commissaries' Courts, and of their desire to treat touching a reformation of matters of religion. Before they intermeddle with these things he wished they would confer with the members of the Convocation House. Upon this message there grew some dispute; and it was urged that there was no precedent of any conference with a Convocation. But it was said they would be ready to confer of any matter of that nature with the bishops as Lords of Parliament, and wished that so much might be made known to His Majesty."—*Commons' Journals*, i. 173.

April 17.

"Mr. Speaker enlargeth the message from His Majesty touching matter of religion: That His Majesty wisheth an absolute reformation; that in some things the Convocation may have assistance from this House; that they would first strive truly to discern what the abuses are, and then proceed to reform. The manner of proceeding again disputed, and in the end thought fit and so ordered to have conference with the bishops as Lords of the Upper House touching these matters."—*Commons' Journals*, i. 176.

April 18.

"Touching matters of religion and government ecclesiastical it was urged by some that the messenger sent with the Bills might move a conference to be had generally with the Lords and not otherwise; the time and place to be appointed by them; yet that the desire of the committee is there may be some time of intermission and deliberation, being a matter of moment and so recommended by His Majesty. Upon this motion Mr. Speaker took occasion to deliver His Majesty's further pleasure; that touching those matters he had given power by his letters patents to the members of the Convocation House to debate, consider, and determine, that His Majesty would make no new precedents, would protect us in that we have and not subject us to any other, and wisheth we would confer, as was assented, with the bishops as Lords of Parliament, which was agreed, and the messenger appointed to move to that purpose."—*Commons' Journals*, i. 176.

[This is reported to the Lords the same day; they agreed April 19; *Lords' Journals*, ii. 281. It is reported to Convocation on the 18th; *Cardwell Synod.*, ii. 584. Notes of the conferences occur in the journals of both Houses; *Lords' Journals*, D.S. ii. 282, 286, 287, 294, 300, 302, 305, 306; *Commons' Journals*, i. 178, 189, 212, 214, 224, 229, 235.]

May 18.

"Sir Francis Hastings reporteth the conference [May 17] touching matters ecclesiastical and religion: the king surveyed the Articles, gave answers not resolute nor particular, but said there were three kinds of people, papist, atheist, professor, the two first increased, the other decreased. If the papist should take away that which many thirst after he should die in a good cause. The king's resolution, so long as his heart was in his body, he would ever continue this religion:—Uttered with great magnanimity. There were two remedies, spiritual, temporal. He had enjoined the bishops to instruct. The Lord Chancellor and the two presidents admonished to provide against atheists, papists, and such as refuse to receive the sacrament. He wished the Lords and the Commons to think of laws to hem them in; touching forfeiture, if they bring their payment in the one hand and offer obedience in the other they should have their payment back again. Touching refractory ministers and reformists let them consider of the Book of Common Prayer and insist upon those points from which they will not vary. He wished that there might be a sub-committee presently chosen out of the Great Committee to consider what laws presently, what for the next session, what the king may do out of his regal power without law."—*Commons' Journal*, i. 214.

May 24.

"Sir Francis Hastings remembereth the proceeding touching matters of religion in the late conference:—Some things begun by the Lords, some by us, some deferred. By the Lords: A declaration of all former statutes that concerned recusants, seminaries, &c.; a law to be made against schoolmasters. By us: An Act for planting a learned ministry; to proceed with the Bill against Pluralities. Deferred: An Act touching the Articles of Religion. Referred to the next Conference: Learned ministers, how to be settled by law. Some of the Convocation House to attend and deliver reasons, &c. Not agreed. Mr. Vice-Chamberlain and Mr. Secretary Herbert sent in message to the Lords to pray a second Conference for matters of religion."—*Commons' Journal*, i. 224.

[The Lords fix May 31; *Lords' Journal*, ii. 305; but as that day the king was removing, and as the following day was a convocation day, it was deferred to June 4; *ib.* 309.—*Commons' Journal*, i. 229.]

June 8.

"Sir Francis Hastings maketh report of the meeting and conference of the sub-committees of both Houses at Whytehall upon Monday last. Part taken by the Lords, part by us. That by us was in Bills depending, viz., 1, for the providing of a learned ministry; 2, against pluralities; 3, some points by petition and not by Bill. An instrument read by a Bishop coming from the Convocation House. A mislike uttered that the House of Commons should deal in any matters of religion. Dislike of the Conference of the Bishops with us:—that it prejudged the liberties of the Church; that if the Bishops would not desist, they would appeal to the King, who had given them authority to deal only in these matters. *Conclus.*, To proceed in a petition by ourselves, seeing the Bishops refuse to join with us."—*Commons' Journal*, i. 235.

[After this report there is some rough speaking in the House; and it is proposed to send for the document of the Convocation referred to, and as some Members of the House were of the Convocation, to obtain a copy of the powers under which Convocation was acting; to protest against the Bishops' protest, &c. Mr. Cole complains that Dr. Howson, a Member of Convocation, has spoken scandal and scorn of the House of Commons.] *Commons' Journal*, i. 235.

[June 11.

A Bill is read in the House of Commons for the reformation of certain abuses in Ecclesiastical Courts and causes. June 13, a committee reports a search for precedents for intermeddling with Ecclesiastical causes; many such were produced, but are not cited. A petition for dispensation was drawn up and discussed. June 14, a Bill for dealing with the subject was brought into the House of Lords. June 16, the Bill was read a second time in the Commons and committed; and the petition for dispensation was made ready for delivery.—*Ibid.*, pp. 236–240.]



June 21.

"A question moved touching the Instrument of Inhibition from the Convocation House read at the last conference for matters of religion . . . . Resolved, to pray conference touching the instrument read by the Bishops at the late Conference taxing the intermeddling of this House in matters of religion."—"That the Lower House of Convocation found fault that the lords bishops conferred with us in matters of religion, protesting most, if they did [not] resist, they would appeal unto the king."—*Commons' Journal*, i. 244. Cf. *Lords' Journal*, ii. 325.

[The House also desired a submission to be made by the Bishop of London, who had produced this instrument, before the Lords.—*Commons' Journal*, i. 996, 1000.]

June 29.

"A Committee to be named for conference with the Lords . . . . Matters of the Conference . . . . (4) Question of the authority of this House and of the Convocation House in matters ecclesiastical."—*Commons' Journal*, i., 248. Cf. *Lords' Journal*, ii. 332.

July 2.

"Sir Francis Hastings maketh a brief report of part of the late conference had with the Lords:—The matter of the Convocation House. The submission of the Bishop in his charge. The former instrument of the Convocation, &c., that the laity had nothing to do, &c., read again; but the Bishop of London said they conceived the privilege of Parliament to stand upright; therefore wished there might be no more ado made of it . . . ."—*Commons' Journal*, i. 251.

[This Parliament was prorogued July 7; several Bills on Ecclesiastical proceedings were read in it, but did not become law. The Convocation which sat coincidentally with it passed the Canons and Constitutions of 1604. The Hampton Court Conference was held January 14–18, 1604. The King, in his Proclamation of October 24, 1603, had declared, that in case of proved abuses "we will therein proceed according to the laws and customs of this realm, by advice of our Council, or in our High Court of Parliament, or by the Convocation of our Clergy, as we shall find reason to lead us, not doubting but that in such an orderly proceeding we shall have the prelates and others of our clergy no less willing, and far more able to afford us their duty and service than any other whose zeal goeth so fast before their discretion."—*Cardwell, Doc. Ann.*, ii. 66.]

1605–6, 4 James 1.

[In this session a large number of Bills touching religion were introduced into the House of Commons, *e.g.*, for the providing an able ministry, the establishment of a learned ministry, the restoration of deprived ministers, the treatment of recusants, the observance of the Lord's Day, the treatment of unworthy ministers, the establishment of true religion, and the like. The Commons had several conferences with the Lords, and some question was made as to the competency of Parliament to deal with religion, but without special reference made to the powers of Convocation. The principal matters of note are the following:—]

1606, Feb. 24.

"Bill for establishing of true religion: the amendments this day read and excepted against in some things by Sir Edwin Sandys: Bills touching religion ever handled in this House, in King Edward's time, Queen Elizabeth's time. Mr. Wentworth: In mirabiliter factis ratio facti est potentia faciendi. Mr. Yelverton: The Papists' slander that we hold our religion by Parliament."—*Commons' Journals*, i. 273.

[Feb. 25 and March 4. Bill on ecclesiastical government. March 26. A new Bill for the execution of ecclesiastical government. April 1: Read a second time; further stages April 12.]

March 15.

"On deprived ministers: . . . . Sir Richard Spencer, against the self-weening opinion of some ministers; matters of discipline to be changed according to times and places; ceremonies agreed upon by a general Convocation not to be subject to any private man. Sir Wm. Strowd: That a Conference may be desired of the Lords the Bishops to understand if they be justly or unjustly put out. Sir F. Hastings: An ordinary way to proceed by petition to the King for these things; the like the last Parliament; to desire no opinion of innovation, presbytery, &c. . . . Sir George Moore: To see first whether they be justly deprived. Sir Nath. Bacon: 260 ministers deprived; that they may be suffered to preach again; and that there may be no more any such course taken by the Bishops hereafter. Mr. Hoskins: He hath a dull spirit that hath no feeling in this cause; we ought to be intercessors for such as are intercessors for us to God; to confer with the Bishops before we offer it to the King. *Quest.*: To desire a conference with the Lords before the first Article be put to question."—*Commons' Journals*, i. 285.

[April 1.

In the House of Lords the Archbishop of Canterbury presents the King's wish for reform of Ecclesiastical Courts in matter of Excommunication.—*Lords' Journals*, ii. 405.

April 5.

The Commons desire a conference with the Lords on four points of ecclesiastical grievances: (1.) Deprivation, suspension, and silencing of ministers; (2.) Multiplicity of Ecclesiastical Commissions; (3.) Form of citations; (4.) Excommunications.—*Lords' Journals*, ii. 407; *Commons' Journals*, i. 294.

Several negotiations follow between the two Houses.

April 26.

The Archbishop brings in the Bill on Excommunication at the King's request.—*Lords' Journals*, ii. 417.

April 28.

The Conference on grievances reported to the Lords.—*Lords' Journals*, ii. 418.

April 29.

The Conference on grievances reported to the Commons.—*Commons' Journals*, ii. 302

May 1.

Further Conference desired.—*Lords' Journals*, ii. 421; *Commons' Journals*, i. 303.]



[May 3.]

Report of conference by Mr. Yelverton. In this report is mooted the serious question of the issue of ecclesiastical writs in the name of the bishops; the repeal (2 Jac. c. 25) of the Stat. 1 Mar., ss. 2, c. 2., which repealed 1 Edw. 6, c. 2, was regarded as reviving the statute of Edward and disabling the bishops as irregularly appointed and exercising illegal jurisdiction. It was alleged that the deprivations were simply *coram non judice*, and that the bishops and their ministers were at the King's mercy. This argument was pressed from time to time until, in 1637, the 12 judges reported that the Stat. 1 Edw. 6, c. 2, being contrary to the Stat. 25 Hen. 8, c. 20, was not revived by the repeal of the Marian Statute; Gibson, *Codex*, 132, 967. On the present occasion Mr. Speaker states that the repeal of the Marian Statute moved from the bishops themselves.—*See Commons' Journals*, i. 304; *Lords' Journals*, ii. 422.]

• May 5.

“3 Reading: Act to restrain the execution of Canons Ecclesiastical not confirmed by Parliament; upon the question passed.”—*Commons' Journals*, i. 305.

[This Bill was read a first time in the House of Lords May 6, and a second time, May 10, but does not seem to get any farther.—*Lords' Journals*, ii. 426, 429.]

[May 12.]

Debate in the Commons on the grievances: “Mr. Fuller moveth that the matter of deprived ministers should be verbally presented to the King; delivereth many particulars of the dealing of them together with their opinion of the Book of Common Prayer in some particulars.” Report of the Conference on ecclesiastical causes.—*Commons' Journals*, i. 308.]

[May 19. In the House of Lords a Bill on Ecclesiastical Courts and Excommunication is read twice, and a third time on May 22.—*Lords' Journals*, ii. 436, 438.

On the 22nd this Bill is rejected by the Commons with much distaste.—*Commons' Journals*, i. 311.]

[May 26.]

In the Commons:] Touching a sermon made by one Parker: That where an invective sermon was yesterday made at Paule's by the preacher, one Parker, chaunter in the cathedral church at Lincoln, and a member of the Convocation House. Mr. Recorder reports the points of the sermon. Mr. Martin proposes a short Bill to declare him infamous and incapable; to speak to the bishops to have him degraded. Sir F. Hastings: . . . . Doubtful that he cannot be sent for because of the Convocation. . . . . Sir Roger Aston: Mr. Recorder of London to acquaint His Majesty with it this afternoon, and to send the serjeant for the party in the meantime; this by way of prevention. In the afternoon it is reported that Parker has fled. The King's advice is reported: “Liked the course well of coming; could not have taken well the serjeant before; himself “ would be the revenger.”—*Commons' Journals*, i. 312.

[May 27.]

Moved that an entry be made of the matter of Parker.—*Commons' Journals*, i. 312, 313.

No Ecclesiastical Bill became law in this session.]

### 1606-7, 4 & 5 James.

[A Bill to direct some proceedings in ecclesiastical causes was read in the Commons November 28; a second time and committed November 29; reported and read twice December 3; read a third time and passed December 6; and sent up to the Lords December 10. It was read once in the Lords December 13, and is described as a Bill on Accusation and the Oath ex-officio.—*Commons' Journals*, i. 326, 327, 328, 329; *Lords' Journals*, ii. 463.]

[A Bill to restrain the execution of Canons Ecclesiastical not confirmed by Parliament, brought into the Commons November 29, 1606; read December 2, December 11, and March 5, 1607; on which day, after much disputation, it passed. It was delivered to the Lords with a strong recommendation March 9, read once March 16, a second time April 30, and committed.—*Commons' Journal*, i. 326, 327; *Lords' Journals*, ii. 485, 489, 503.]

[A Bill on non-residence and Pluralities read three times in the Commons, February 26, 1607, March 4, and March 9, was sent to the Lords on the latter day with a strong recommendation, and read once March 16.—*Commons' Journals*, i. 342, 347, 350; *Lords' Journals*, ii. 489.]

[A Bill to explain 13 Eliz. c. 12 on subscription, read three times in the Commons, March 3, March 9, and May 2, was sent up to the Lords and read once, May 18.—*Commons' Journals*, i. 346, 350, 366, 372; *Lords' Journals*, ii. 510.]

[A petition against recusancy and the abuses of non-residence, ordered to be framed May 18, reported June 11, and brought before the House on June 16, was on the latter day stopped by order of the King.] “Answer was made by Mr. Speaker that His Majesty had taken notice of the petition, and saith he will ever be most careful to execute those laws, that it is a matter merely belonging unto himself, and that it shall be needless to press him in it.” [Complaint being made about this.] “Mr. Speaker replied that there be many precedents in the late Queen's time where she restrained the House from meddling in petitions of divers kinds.” After further discussion and remonstrance on the 18th of June, by the King's permission the petition was read in the House; and it was moved “That we “ should contest no more with the King, yet to proceed thus far as to read to the House the “ warrant of the committees, so as it might appear they had not exceeded their commission in “ anything. That it may be conceived and set down, so as we may go home with joy, that his “ Majesty hath no meaning to infringe our privileges by any message, but that his desire is we “ should enjoy them with all freedom. Some would have had the petition put to question for “ further proceeding; but it was at length, with general liking, agreed to sleep.”—*Commons' Journals*, i. 374, 382, 384.

[There were some minor attempts at ecclesiastical legislation, but no bill of the kind became law.]

### [1610, 7 & 8 James.

In this session, which lasted from February to July, the Ecclesiastical bills were for the most part identical with those of 1607, but they occupy less space in the journals, and share the same fate. There are Bills on non-residence and pluralities, on scandalous ministers, on ecclesiastical jurisdiction, the oath ex officio, excommunication, the Prerogative Court, silenced ministers, subscription and restraint of canons. Of these the following are noteworthy:—

The Bill on restraint of canons not confirmed by Parliament is read three times (April 18, 24, 26) in the Commons, and sent up to the Lords, by whom it is read May 12, June 11, and committed. A conference is held with the



Commons upon it (July 5, 6, 7, 12) and in the King's speech at the prorogation he gives reasons for not passing a Bill on the subject.—*Commons' Journals*, i. 417, 420, 422; *Lords' Journals*, ii. 584, 592, 611, 631, 659.

The Bill on non-residence goes through the same stages; the King declares that he will order the bishops to enforce the canon on the subject.—*Commons' Journals*, i. 393, &c.; *Lords' Journals*, ii. 584, 604, 609, 658.

The Bills on excommunication, prohibitions, ecclesiastical commissions, and the oath ex officio, are declined in the same way.—*Cf. Cardwell, Doc. Ann.*, ii. 154, 155

[1614, 12 James.

In this short session, which lasted from April 5 to June 7, no ecclesiastical bills became law, and very few of those mooted in the Commons reached the House of Lords; but the usual propositions were brought forward and debated with some violence, *e.g.*, the matters of Ecclesiastical Courts (April 12), subscription (April 15), non-residence (April 19, May 12, and May 25), excommunication and the oath ex officio (April 20, May 10, and May 31). A Bill for restraint of canons was read once on the 31st of May, and the closing days of the session in both houses were occupied with disputes on the bishop of Lincoln's "Noli me tangere" speech.

The following extracts are note-worthy :

April 12.

Mr. Wentworth raised a question in debate on grievances : "No cross upon the bread at the communion."—*Ib.*, p. 461.]

"April 13.

"The Communion to be received at the parish church; not at the abbey, but at the parish church; that in the abbey they administer not with common bread, contrary to the 20th Canon and the Book of Common Prayer. Question whether at the parish church; resolved, yea."—*Commons' Journals*, i. 463.

[May 12.

A debate on the second reading of a Bill on non-residence. Sir Thomas Lake "Wisheth well to the success of this Bill as a mean to further the growth of religion. The Church the only Garden of Paradise; planting and weeding; more care taken in Queen Elizabeth's time to weed than plant; that the former ill success by not good fashion holden with the lords of the clergy. Moveth a conference with some of the Convocation House, if it may stand with the order of the House. . . ." Sir Edwin Sandys "moveth a conference with the bishops as lords of parliament, not with the Convocation House or Council."—*Commons' Journals*, i. 482.

1621, 18 & 19 James, Feb. 8.

"Sir George Moore proceedeth with his report for the third question, concerning the return of . . . , a Minister, returned for Morpeth in Northumberland. Sir Edw. Coke :—When speaker, one put out, and that he saw Alexander Nowell (though he had not curam animarum) put out because of the Convocation House."—*Commons' Journals*, i. 513.

March 1.

"This day the Lord Archbishop of Canterbury remembered the Lords that heretofore anciently and always until of very late time, this High Court did ever forbear to sit upon Wednesdays and Fridays, for that the Lords the Bishops on those days did and were accustomed to meet and to be busied in the Convocation. Therefore his Lordship moved the House that for the same cause their Lordships should be pleased not to meet or sit here in Council upon the said days, namely, on Wednesdays and Fridays. Which motion was generally allowed, with provision that the Lord Chancellor do propose unto the House on Tuesdays and Thursdays whether the Court will sit the next day or not, or shall be adjourned as before as by the Lord Archbishop was moved."—*Lords' Journals*, iii. 32.

[In the year 1621 the Parliament sat from Jan. 16, with an Easter adjournment, to June 4, and again from November 14 to December 18. Ecclesiastical questions occupy a very subordinate place in the debates, and no Ecclesiastical Bill becomes law. It may be noted that the Bishop of Llandaff, having incurred the charge of Brocage in bribery, was, on complaint of the Commons, by order of the Lords, admonished by the Archbishop in the Convocation House; the Archbishop having moved "that he may bear this fault as Dr. Field and not as Bishop of Llandaff."—*Lords' Journals*, iii. 144, 153.]

1621, 18 James I., March 5.

[In a discussion on Patents], Sir John Walter moves "To send to the Convocation House to draw a curse against all these."—*Commons' Journals*, i. 539.

[1624.

This year Parliament sat from Feb. 19 to May 29. Some of the Ecclesiastical Acts which had passed the Commons in the late sessions, were sent up to the Lords and had readings there, but did not become law. The Bishop of Norwich was complained of by the House of Commons for practices reputed popish; and on the 7th of May, Sir E. Coke reported "that the not observing of the King's ecclesiastical laws was a matter for our consideration." Proceedings were being taken against the Bishop when the session ended.—*Commons' Journals*, i. 699-715; *Lords' Journals*, iii. 388-290.]

[1625, 1 Charles.

In the short Parliament which sat from June 21 to August 12, no Ecclesiastical Act was passed. In a debate on Dr. Montague's book, August 2, Sir Edward Coke "Wisheth that no man may put out any book of divinity not allowed by the Convocation. Sir W. Heale wisheth a Bill to that purpose."—*Commons' Journal*, i. 809.]

[1626, 1 & 2 Charles.

The Parliament sat from February 6 to June 15. The Ecclesiastical Bills which had been so frequently brought forward in the last reign reappeared, but the most important business was secular. There were examinations into the Acts of the Court of High Commission, in the cases of the Bishop of Bangor and Sir Robert Howard; and proceedings against Dr. Montague were continued. The Journals do not contain anything of importance touching Convocation or Ecclesiastical legislation.]

[1628, 3 & 4 Charles.

The Session lasted from March 17 to June 26. In it the Petition of Right was drawn up and presented. The usual Bills were debated and read. The Journals of the House of Commons are very brief, and furnish little information on Ecclesiastical matters. The proceedings against Dr. Mainwaring are, however, a prominent matter in both Houses.



April 29.

James Wittney, a Clerk of the Convocation, claims for his servant privilege against the Sheriff of Herefordshire. On the 16th of May is presented a Petition from the Lower House of Convocation, complaining of the arrest of Wittney's servant; and the Sergeant-at-arms is ordered to bring up the Undersheriff to answer for the contempt. On the 20th of May the Undersheriff appears, and is ordered to submit himself to the House of Convocation, being then discharged on payment of fees. On the 22nd the Lord Archbishop of Canterbury rendered the Lords thanks, in the name of the Convocation, for the justice they received for the infringement of their privileges, and signified unto their Lordships that John Dyos had made his submission, according to the order of this House, May 20, 1628.—*Lords' Journals*, iii., 774, 798, 805, 809.]

1629, 4 Charles. Jan. 20---March 2.

January 29.

"Mr. Pymme reporteth to the House a frame of a declaration agreed upon by the Committee of Religion, and followeth in these words:—'That we, the Commons assembled in Parliament, do claim, profess, and avow for truth, that sense of the Articles of Religion which were established in Parliament in the 13th year of the reign of Queen Elizabeth, which by the public Acts of the Church of England, and by the general and current expositions of the writers of the church, hath been delivered unto us; and we reject the sense of the Jesuits, Arminians, and of all other wherein they differ from us.' This, upon question, agreed."—*Commons' Journals*, i. 924.

[This was apparently a challenge by the House to the King, consequent on his Declaration, prefixed to the Thirty-nine Articles.]

1640, 16 Charles. April 13—May 5.

April 16.

In the House of Lords: "It was moved that in regard the Convocation House doth sit to-morrow, the House might be adjourned until Saturday next; but it was not agreed unto, because it was alleged that the High Court of Parliament is not subordinate to any other court. Therefore it was ordered that search should be made in the Journal Books, whether it hath been a custom to adjourn the House because of the Convocation sitting the next day."—*Lords' Journals*, iv. 56.

April 21.

"The ordinary days for the Convocation of the Clergy to sit are Wednesdays and Fridays, and their ordinary hours are from eight or nine in the morning to eleven; but they may sit, as their business leads them, upon any day or at any hour, so it be without prejudice to this honourable House; but this House is to be always free to sit or not to sit upon Convocation days, as they see cause; and the Lords Spiritual are ever upon Tuesdays and Thursdays to move by the Lord Keeper whether this honourable House will sit the day following or not, that so they may dispose of themselves and their affairs accordingly."—*Lords' Journals*, iv. 61.

April 21.

In the House of Commons: "Sir W. Erle moves the House to take notice of a Commission he understands they have at this time in the Convocation House:—*Ordered*, this Committee to take view of the Commission now lately granted to the Convocation, and to report the effect of it to the House to-morrow morning."—*Commons' Journals*, ii. 8.

April 22.

"Report from the Committee that was yesterday appointed to view the Commission that was lately granted to the Convocation. That this Commission was not inrolled nor went forth by order from the Signet or Privy Seal, but by an immediate command of His Majesty, signified unto the Lord Keeper; that they found the docket of it remaining with the Clerk of the Crown, by which it appears that, by this Commission, power is given unto them to alter or amend the old constitutions and customs, and to make new."

It is resolved to request a Conference with the Lords on this and other matters touching religion.—*Commons' Journals*, ii. 9.

Further proceedings are taken on April 24 when it is resolved that in the conference with the Lords "for prevention of innovations in matter of religion there shall be use made of this Commission lately granted to the Convocation, the rather because of the complaints of innovations practised before the grant of this Commission."—*Commons' Journals*, ii. 11.

April 29.

The conduct of the Conference, on the point of innovations, was committed to Mr. Pimme; and the following particulars for discussion were by question resolved upon:—

1. Resolved upon the question that in this Conference with the Lords there shall be a protestation and saving made to preserve and keep entire the right of the Commons not to be bound by any canons that are or shall be made upon any Commission granted or to be granted to the Convocation without their consent in Parliament.
2. Resolved upon the question that in this conference with the Lords one head shall be touching the removal of the Communion Tables in parish churches and chapels in the universities, and placing them altarwise at the east end of the same churches and chapels close to the wall.
3. Resolved upon the question that another head of this Conference shall be the setting up of crosses, images, and crucifixes in Cathedral and parochial churches and chapels both in the Universities and divers other places of this kingdom.
4. Resolved upon the question that another head of this Conference shall be the refusing to administer the sacrament to such as will not come up to the rail before the Communion Table set altarwise and excommunicating some for not doing it.
5. Resolved upon the question that in this Conference another head shall be the making and enjoining of articles at visitations without any other authority than that of the bishops of the diocese.



6. Resolved upon the question that in this Conference another head shall be touching the molesting, suspending or depriving of many godly and conformable ministers for not yielding to matters enjoined without warrant of law; instancing such as have been deprived for not reading the book for recreations on Sundays.
7. Resolved upon the question that in this Conference one head shall be touching the printing, preaching, and determining of and for Popish tenets contrary to the doctrine of the Church of England.
8. Resolved upon the question that in this Conference one head shall be touching the enjoining and preaching of bowing to the altar and the inquiry for the doing or not doing of it.
9. Resolved upon the question that in this conference another head shall be concerning the restraining of conformable ministers from preaching in their own charges.

Resolved upon the question that in this conference with the Lords there shall be a reservation to the parties appointed to carry up this conference of further liberty to add more particulars as there shall be occasion—*Commons' Journals*, ii. 16.

1640, 16 Charles, Nov. 10.

"The Committee is to consider whether any man complained of here, being a Convocation man, may not by authority of this house be sent for by a sergeant-at-arms . . . .

"Moved, to refer the book of the new canons to the examination of the Committee for religion."—*Commons' Journals*, ii. 25.

Nov. 11.

"Upon a motion made by the Lord Archbishop of Canterbury that this being the first day of the adjournment of the Convocation from St. Paul's Church in London to the Abbey in Westminster, and having not yet any prolocutor settled without which the whole body will be voide, and this day being a peremptory day appointed for that business, that their Lordships would be pleased to spare him and some four others of the lords the bishops from attending the committee of both Houses this afternoon; but the rest of the lords the bishops to attend their lordships at the Conference, which was assented unto by the house."—*Lords' Journals*, iv. 88.

Nov. 24.

"By resolution upon the question Thursday next is appointed for the debate of the new canons and the benevolence granted by the clergy."—*Commons' Journals*, ii. 35.

"Ordered Dr. Lafield, vicar of All hallows Barking, to be forthwith sent for as a delinquent by the sergeant-at-arms attending on this house notwithstanding that he is a member of the Convocation House."—*Id.* ii. 36.

[Nov. 26. The debate on the Canons is deferred to Monday Nov. 30; and on Dec. 9 to Dec. 14. On Dec. 15 it was]

"Resolved upon the question, nullo contradicente, that the clergy of England convented in any Convocation or Synod or otherwise have no power to make any constitutions, canons, or acts whatsoever in matter of doctrine, discipline or otherwise to bind the clergy or the laity of this land without common consent of Parliament.

Resolved upon the question, nullo contradicente, that the several constitutions and canons ecclesiastical, treated upon by the Archbishops of Canterbury and York presidents of the Convocations for the respective provinces of Canterbury and York and the rest of the bishops and clergy of those provinces, and agreed upon with the King's Majesty's licence in their several synods begun at London and York, 1640, do not bind the clergy or laity of this land or either of them.

Ordered, to-morrow at nine of the clock, to take into further consideration these particular canons in respect of their matter.—*Commons' Journals*, ii. 48.

Dec. 16.

"Resolved upon the question, nullo contradicente, that these canons and constitutions ecclesiastical treated upon by the Archbishops of Canterbury and York, presidents of the Convocations for the respective provinces of Canterbury and York, and the rest of the bishops and clergy of those provinces, and agreed upon with the King's Majesty's licence in their several synods begun at London and York in the year 1640, do contain in them many matters contrary to the King's prerogative, the fundamental laws and Statutes of the realm, to the right of Parliaments, to the property and liberty of the subjects, and matters tending to sedition and of dangerous consequence.

"Resolved upon the question, nullo contradicente, that the several grants of the Benevolence or Contribution granted to his most excellent Majesty by the clergy of the provinces of Canterbury and York, in the several convocations or synods holden at London and York, A.D. 1640, are contrary to the laws and ought not to bind the clergy."

Instructions are given for further proceedings against the promoters of the Canons and especially against the Archbishop of Canterbury.—*Commons' Journals*, ii. 48, 49. All possibility of continued action by convocation was now cut off by the determination of the Commons to impeach the Archbishop; but the matter of the Canons and action of the Convocation are frequently referred to in the proceedings against him which cannot here be examined.—*See Commons' Journals*, ii. 54, 55. *Lords' Journals*, iv. 112, 172, 265, &c. On the 27th of April 1641 a Bill was read twice, entitled "An Act for the punishing and fining of the members of the late Convocation of the provinces of Canterbury and York." The Committee on this Bill was still sitting in May 1642.—*Commons' Journals*, ii. 135, 147, 156, 177, 566. On the 12th of June 1641, the Lords accepted the resolutions of the Commons of December 15 and 16, 1640.—*Lords' Journals*, iv. 273.



## 1660, 12 Charles II.

[In the Convention Parliament, which met April 25, 1660, the question of religion was mooted in the House of Commons as early as June 26, on which day it was ordered that the Bill of Religion be read to morrow morning. Accordingly on the 27th "An Act for the maintenance of the true reformed protestant religion and for the suppression of popery, superstition, profaneness, and other disorders and innovations in worship and ceremonies" was read a first time; it was read a second time on the 6th of July and committed; and on that day it was ordered that the House be resolved into a Grand Committee of Religion to sit every Monday. On the 20th of July the Grand Committee reported and the House resolved "that the King's Majesty be humbly desired to call such a number of divines as His Majesty shall think fit, to advise concerning matters of religion and that the Grand Committee do forbear to sit until the 23rd of October next."—*Commons' Journals*, viii. 75, 76, 78, 79, 82, 95. No Convocation was sitting, and the Bishops had not yet been recalled to the House of Lords. On the 25th of October the King issued a declaration on religion.]

## 1660.

The King's declaration touching ecclesiastical affairs, October 25, 1660; read in the House of Lords November 9.

§ 3. No bishop shall ordain or exercise any part of the jurisdiction which appertains to the censures of the Church without the advice and assistance of the presbyters; and no chancellors, commissaries, or officials as such, shall exercise any act of spiritual jurisdiction in these cases, viz., excommunication, absolution, or wherein any of the ministry are concerned with reference to their pastoral charge. However our intent and meaning is to uphold and maintain the profession of the civil law so far and in such matters as it hath been of use and practice within our kingdoms and dominions, albeit as to excommunication our will and pleasure is that no chancellor, commissary, or official shall decree any sentence of excommunication or absolution, or be judges in those things wherein any of the ministry are concerned as is aforesaid. Nor shall the archdeacon exercise any jurisdiction without the advice and assistance of six ministers of his archdeaconry, whereof three to be nominated by the bishop and three by the election of the major part of the presbyters within the archdeaconry."—*Lords' Journals*, xi. 181.

[No action was taken upon the declaration in the House of Lords; in the Commons a committee was formed November 6 to draw up a Bill to carry His Majesty's declaration into effect. This Bill was brought in November 21; read the first time November 28, and thrown out in second reading the same day.—*Commons' Journals*, viii. 176; 187, 194.]

## 1661.

*Proceedings on the Act of Uniformity, 13 & 14 Car. II. c. 4.*

[The King on the 25th of March 1661 issued a Commission to a body of divines to review the Book of Common Prayer. The Savoy Conference, which was carried on under this Commission, sat on several days from April 15 to July 24, when it terminated without result. In the meantime a Convocation had been summoned concurrently with the Parliament which met on the 8th of May; and to this Convocation the review of the Prayer Book was referred by the King, in letters read in Convocation on the 21st of November. In several Sessions between November 21 and December 20, the book was revised, and on the last-named day the revised book was subscribed by both Houses, the clergy of York joining by their representatives accredited by letters of procuration of November 30.—*Kennett, Register*, 566, 584.]

## 1661, 13 Charles II.

[The Parliament met May 8. In the House of Commons on the 11th it was ordered that the Committee for religion should meet every Monday.]

June 25.

"Ordered that a Committee be appointed to view the several laws for confirming the Liturgy of the Church of England, and to make search whether the original book of the Liturgy annexed to the Act passed in the 5th and 6th years of the reign of King Edward the VI. be yet extant, and to bring in a compendious Bill to supply any defect in the former laws, and to provide for an effectual conformity to the Liturgy of the Church for the time to come.

"And a Committee was accordingly appointed of all the members of this House that are of the long robe, and the preparing the Bill was especially recommended to the care of Mr. Serjeant Keeling.

"Ordered that it be referred to the same Committee to look into the Act that takes away the High Commission Court, and to report their opinion how far the coercive power of the Ecclesiastical Courts are taken away, and to prepare a Bill for settling the same if they see cause; and this business is especially recommended to the care of Mr. Serjeant Keeling."—*Commons' Journals*, viii., 247, 279.

[A Bill for the Uniformity of Public Prayers and administration of the Sacraments was read by the Commons for the first time on the 29th of June, and on the 3rd of July it was] "resolved, that the Bill for Uniformity of Public Prayers and Administration of Sacraments, together with the printed book of Common Prayer now brought in, intituled the Book of Common Prayer and administration of the Sacraments, and other Rites and Ceremonies of the Church of England, annexed therunto be committed to" a large Committee named; "and they are to meet this afternoon, at Four of the clock, in the Star Chamber; and if the original Book of Common Prayer cannot be found then to report the said printed book and their opinion touching the same, and to send for persons, papers, and records."—*Ibid.*, p. 289.

July 8.

[The Bill amended with additions and a proviso was reported, and the amendments twice read, and the Bill ordered to be ingrossed; also it was] "ordered that the annexing the Book of Common Prayer to the Bill for Uniformity, and the obliterating the two prayers inserted before the reading psalms, be taken into consideration to-morrow morning."—*Ibid.*, p. 295.

July 9.

"A Bill for the Uniformity of Public Prayers and administration of the Sacraments, being ingrossed, was this day read the third time. And a book of Common Prayer, intituled the Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church of England, which was imprinted at London in the year 1604, was at the clerk's table annexed to the said Bill, part of the two prayers inserted therein before the reading psalms being first taken out and the other part obliterated, and a proviso tendered to be added to the said Bill, being twice read, was upon the question laid aside.



“ Resolved, that the said Bill, with the said Book of Common Prayer so annexed, do pass.

“ Resolved, that the title of the said Bill shall be ‘An Act for the Uniformity of Publick Prayers and Administration of the Sacraments.’—*Commons’ Journals*, viii. p. 296.

July 10.

In the House of Lords, “A message was brought from the House of Commons by Sir Thomas Fanshaw and others who brought up an Act passed their House, intituled, ‘An Act for the Uniformity of Public Prayers and Administration of the Sacraments,’ wherein they desire their Lordships’ concurrence.”—*Lords’ Journals*, xi. 305.

[These proceedings in Parliament took place during the session of the Savoy Conference as noted above. The bishops had not yet been recalled to the House of Lords, and the Bill proceeded no further in that House during the Session, which ended on the 30th of July, by adjournment to the 20th of November. In the November Session the bishops were present in the House of Lords, and the review of the Prayer Book was carried through Convocation. Parliament sat until the 20th of December, Convocation until the 21st. Nothing was done in either House of Parliament touching the Act of Uniformity, except that on the 16th of December the Commons sent a message “to put the Lords in mind of the Bill of Uniformity.”—*Commons’ Journals*, viii. 333; *Lords’ Journals*, xi., 351.]

1662, 13 & 14 Charles II., Jan. 14.

In the House of Lords “Hodie 1<sup>a</sup> vice lecta est Billa, an Act for the Uniformity of Public Prayers and Administration of Sacraments.”—*Lords’ Journals*, xi. 364.

Jan. 17.

The Bill was read a second time and committed; *ib.* 366.

Jan. 28.

A message was sent by the House of Commons to put their Lordships in mind of the Bill; *ib.* 372; *Commons’ Journals*, viii. 352.

Feb. 13.

“The Earl of Dorset reported, that the committee for the Bill for Uniformity of Worship have met often times, and expected a Book of Uniformity to be brought in; but that not being done their Lordships have made no progress therein; therefore the committee desires to know the pleasure of the House, whether they shall proceed upon the book brought from the House of Commons, or stay until the other book be brought in.

“Upon this the Bishop of London signified to the House that the book will very shortly be brought in.”—*Lords’ Journal*, xi. 383.

1662, 14 Charles II., Feb. 25.

“The Lord Chancellor acquainted the House that he was commanded by the King to deliver a message unto their Lordships, which his Lordship read as followeth: videlicet.

Charles R.

His Majesty, having according to his declaration of the 25th of October 1660, granted his commission under the great seal to several bishops and other divines to review the Book of Common Prayer, and to prepare such alterations and additions as they thought fit to offer, afterwards the Convocation of the clergy of both provinces of Canterbury and York were by His Majesty called and assembled, and are now sitting; and His Majesty hath been pleased to authorise and require the presidents of the said Convocations and other bishops and clergy of the same to review the said Book of Common Prayer, and the book of the form and manner of making and consecrating of bishops, priests, and deacons; and that after mature consideration they should make such additions or alterations in the said books respectively as to them should seem meet and convenient, and should exhibit the same to His Majesty in writing for His Majesty’s further consideration, allowance, or confirmation. Since which time, upon full and mature deliberation, they the said presidents, bishops, and clergy of both provinces, have accordingly reviewed the said books and have made, exhibited, and presented to His Majesty in writing some alterations which they think fit to be inserted in the same, and some additional prayers to the said Book of Common Prayer to be used upon proper and emergent occasions. All which His Majesty having duly considered, doth with the advice of his Council fully approve and allow the same, and doth recommend it to the House of Peers that the said Books of Common Prayer and of the Form of Ordination and Consecration of Bishops, Priests, and Deacons, with those alterations and additions [which have been made and presented to His Majesty by the said Convocations] be the book which in and by the intended Act of Uniformity shall be appointed to be used by all that officiate in all cathedral and collegiate churches and chapels, and in all chapels of colleges and halls in both Universities, and the colleges of Eaton and Winchester, and in all parish churches and chapels within the realm of England, dominion of Wales, and town of Berwick-upon-Tweed, and by all that make or consecrate bishops, priests, and deacons in any of the said places, under such sanctions and penalties as the Parliament shall think fit. Given at our Court at Whitehall, the 24th day of February 1661. The book mentioned in His Majesty’s message was brought into this House, which is ordered to be referred to the committee for the Act of Uniformity.”—*Lords’ Journals*, xi. 393.

March 3.

The King in his speech in answer to the address of the Commons said, “I have transmitted this Book of Common Prayer with those alterations and additions which have been presented to me by the Convocation to the House of Peers with my approbation that the Act of Uniformity may relate to it.”—*Commons’ Journals*, viii. 377.

March 13.

In the House of Lords, “The Earl of Bridgewater reported that the committee have considered of the Bill concerning uniformity of worship, wherein the committee have made divers amendments and alterations which are offered to the consideration of this House; and that the committee in their amendments and alterations have made the Bill relate to the book recommended by the King to this House, and not to the book brought with the Bill from the House of Commons.

“Next it was moved that the alterations and additions in the Book of Common Prayer, as it came recommended from his Majesty, might be read before the alterations and amendments in the Bill were read; which



was accordingly ordered and read. But having made little progress therein, and it being now late, and the business will require longer time, it is ordered that this House will proceed in the reading the rest of the alterations and additions to-morrow morning at nine of the clock."—*Lords' Journals*, xi. 406.

March 14.

Then this House proceeded in the reading of the alterations and additions in the Book of Common Prayer and ordered to proceed further in the reading of it to-morrow morning.—*Ib.* p. 407.

March 15.

Next the House proceeded in the further reading of the alterations and additions in the Book of Common Prayers; which being ended, the Lord Chancellor in the name and by the directions of the House gave the Lords the bishops thanks for their care in this business, and desired their Lordships to give the like thanks from this House to the other House of Convocation for their pains herein.

Ordered that this House will take into consideration the alterations and amendments in the Bill concerning uniformity of public worship as it was lately reported; and this to be on Monday morning next.—*Ib.* p. 408.

March 17.

Next this House took into consideration the Bill concerning Uniformity in public worship formerly reported from the Committee; and upon the second reading of the alterations and provisos and consideration thereof, it is ordered, that this House agrees to the preamble, as it is now brought in by the Committee; and the question being put, whether this book, that hath been transmitted to the House from the King, shall be the book to which the Act of Uniformity shall relate; it was resolved in the affirmative.

Then the Lord Chancellor acquainted the House with a proviso recommended from the King to be inserted in this Bill of Uniformity, which his Lordship read, and it was commanded that the same should be read again. And it is ordered that the further debate of this business is deferred until to-morrow morning.—*Lords' Journals*, xi. 409.

March 18.

Next this House took into consideration the business of presenting the proviso yesterday from the King to this House. For debate whereof the House was adjourned into a Committee during pleasure. And the House being resumed, this question was put whether a salvo shall be entered into the book to save the privilege of the House upon the occasion of this proviso from the King. And it was resolved in the negative. Ordered that to-morrow morning the debate concerning the matter of this proviso shall be resumed.—*Lords' Journals*, xi. 410.

March 19.

Next the House took into consideration the matter in the King's proviso to the Bill for Uniformity of Worship; and the proviso was read again and debated; and there being another proviso offered to the House which was read, the question being put, whether this proviso shall be rejected, it was resolved in the affirmative.

Ordered that the Bill for uniformity is re-committed; also the proviso sent from the King is referred to the consideration of the same Committee.—*Ibid.* p. 411.

April 4.

The Earl of Bridgewater reported from the Committee the alterations and provisos in the Bill concerning Uniformity of Worship. The said alterations and provisos were read twice and debated. The question being put whether these words [though indifferent in their own nature], shall stand in the proviso as they are brought in by the Committee, it was resolved in the affirmative.—*Ibid.* p. 421.

April 5.

Next the House resumed the debate as was yesterday upon report of the Bill concerning Uniformity of Worship; the point now in consideration was the clause of ministers declaring against the covenant; and after a long debate the question was put whether this clause [I do declare that I hold that there is no obligation upon me or any other person from the oath commonly called the Solemn League and Covenant] shall stand in the Bill as it is brought in by the Committee, it was resolved in the affirmative.

Ordered that this Bill shall be taken into further debate on Monday morning next.—*Lords' Journals*, xi. 422.

April 7.

This day being appointed to consider further of the Act of Uniformity, the Lord Bishop of Worcester offered to the consideration of this House an explanation, in a paper, of the vote of this House on Saturday last concerning the words in the Act of Uniformity, which declared against the solemn league and covenant; which he first opened, and afterwards, by permission of the House read the same; which afterwards the House commanded to be read by the Clerk: and after debate thereof, the question being put, whether that the proceeding of the debate of this paper thus brought in be against the Orders of this House. It was resolved in the negative.

Ordered that this House will take into debate this paper to-morrow morning.

Memorandum that before the putting of the aforesaid question, these Lords whose names are subscribed, desired leave to enter their dissents, if the question was carried in the negative.—*Lords' Journals*, xi. 423.

April 8.

Next the House took into consideration the paper brought in yesterday for an explanation in the Act of Uniformity considering the declaring against the Covenant, and after a long debate, it is ordered that this paper be laid aside.

Ordered, that these Lords following are appointed to consider and draw up a clause or proviso whereby it may be left to the King to make such provision for those of the clergy, as His Majesty shall think fit, who shall be deprived of their livings by the Act of Uniformity, and afterwards to make report thereof to this House.—*Lords' Journals*, xi. 424.



April 9.

The Earl of Anglesey reported that the Committee have considered of a proviso that such persons as are put out of their livings by virtue of this Act of Uniformity, may have such allowances out of their livings for their subsistence as His Majesty shall think fit. The said proviso was read, and after some debate, a few alterations made therein; and the question being put whether this proviso, with the alterations, shall stand in the Bill, it was resolved in the affirmative.

*Hodie tertia vice lecta est Billa*, an Act for the Uniformity of public Prayers and administration of Sacraments and other Rites and Ceremonies, and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England. The question being put, whether this Bill, with the alterations and amendments shall pass, it was resolved in the affirmative.

Ordered to send for a Conference with the House of Commons to-morrow morning, and communicate this Bill with the alterations and amendments to them.—*Lords' Journals*, xi. 425.

April 10.

A message was sent to the House of Commons by Sir Moundeford Brampston and Sir Nathaniell Hobart, to desire a present conference in the painted chamber concerning the Act of Uniformity. The Lord Chancellor, the Earl of Bridgwater, and the Bishop of London were appointed to manage the Conference.

The House directed that the Book of Common Prayer recommended from the King shall be delivered to the House of Commons, as that being the book to which the Act of Uniformity is to relate; and also to deliver the book wherein the alterations are made out of which the other book was fairly written; and likewise to communicate to them the King's message recommending the said book; and lastly to let the Commons know, that the Lords upon consideration had of the Act of Uniformity have thought fit to make some alterations, and add some provisos to which the concurrence of the House of Commons is desired.—*Lords' Journals*, xi. 426.

[The commons agreed and ordered Serjeants Keeling and Charlton, Sir Robert Howard, Sir Robert Atkins, Sir Thomas Meres, and Dr. Birkinhead to report from the Conference.]

April 10.

Serjeant Keeling reports from the Conference had with the Lords upon the Bill of Uniformity; that the reason of the delay of the said Bill was that the Book of Common Prayer had by reference from His Majesty been under the consideration of the Convocation who had made some alterations and additions thereunto; and that the lords had perused the same, as also the Bill sent from this House, and had returned the same together with the Book of Common Prayer, as the same is amended and by them agreed to, and some amendments and provisos to the bill, to which they desired the concurrence of this House, and delivered the same in at the clerk's table.

Resolved upon the question, that this House will enter upon the consideration and debate of this matter to-morrow morning.—*Commons' Journals*, viii. 402.

April 11.

Ordered that the House do proceed upon the Bill for Uniformity to-morrow morning.—*Ibid.* p. 403.

April 12.

Amendments and additions sent from the Lords to the Bill of Uniformity were this day read.

Resolved that the Amendments in the Book of Common Prayer sent down from the Lords be read on Monday next.—*Ibid.* p. 404.

1662, April 14.

The Amendments in the Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church of England sent from the Lords, the transcript of which book so amended therewith sent, they desire to be added to the Bill of Uniformity instead of the book sent up therewith, was in part read.

P.M. The rest of the Amendments in the said book were then read throughout. Resolved upon the question that the Amendments to the said Bill with the additions sent by the Lords be read the second time and proceeded in to-morrow morning at nine o'clock.—*Commons' Journals*, viii. 405.

April 15.

The House then resumed the debate upon the Amendments sent down from the Lords to the Bill of Uniformity, which were begun to be read the second time. Resolved upon the question that the first amendment as to the title of the Bill be postponed. The question being put to agree with the Lords as to the amendment to the compiling of the Book of Common Prayer by the bishops and the Act of 1 Elizabeth for enjoining it to be used. It was resolved in the affirmative.

The rest of the Amendments unto the Amendment in the 25th line were read the second time and upon the question agreed to. The question being put that the paragraph of the Amendment in relation to the recital of the progress of the proceedings, till that Amendment which does concern the book annexed to the Bill, be postponed; the House was divided, and it passed in the negative by 119 votes to 84.

Resolved upon the question, that Mr. Vaughan, Mr. Knight, &c., or any six of them, be appointed a Committee to compare the Books of Common Prayer sent down from the Lords with the book sent up from this House, and to see whether they differ in anything besides the amendments sent from the Lords and already read in this house, and wherein; and to make their report therein with all the speed they can; and for that purpose they are to meet this afternoon at two of the clock in the Speaker's chamber.—*Commons' Journals*, viii. 406.

1662, April 16.

Mr. Vaughan reports from the committee appointed to compare the Books of Common Prayer sent down from the Lords with the book sent up from this House, and to see whether they differ in anything besides the amendments sent from the Lords and already read in this House, and wherein: that the said committee had met yesterday and sat till eight at night, and had met early this morning, and taken great care and pains in comparing and examining the said books. . . .

Resolved: That the thanks of this House be returned to the said committee for their great care and pains in comparing and examining the Book of Common Prayer according to the order and direction of this House. And Mr. Speaker did return them the thanks of the House accordingly.



The House then resumed the debate upon the amendments sent down from the Lords to the Bill of Uniformity.

And the seventh amendment at the 24th line of this Bill being again read: Resolved upon the question that this House doth disagree to these words in the 25th line of the said amendment, "and tenderness of some men's consciences," and doth think fit that the word "have" be made "hath."

The question being propounded whether debate shall be admitted to the amendments made by the Convocation in the Book of Common Prayer, and sent down by the Lords to this House; and the question being put whether that question shall be now put, it was resolved in the affirmative.

And the main question being put, whether debate shall be admitted to the amendments made by the Convocation in the Book of Common Prayer and sent down by the Lords to this House, the House was divided. The noes went out.

Mr. Williams	{ Tellers for the yeas	} 90.
Mr. Boscawen		
Sir Edm. Peirse	{ Tellers for the noes	} 96.
Mr. Spencer		

And so it passed in the negative.

The question being put that the amendments made by the Convocation, and sent down by the Lords to this House, might by order of this House have been debated; it was resolved in the affirmative.

The question being put to agree to the said seventh amendment sent down from the Lords at the 24th line in the Bill of Uniformity, with the alteration made by this House and before expressed; it was resolved in the affirmative.

Ordered that this House do proceed to-morrow morning to the further consideration of the residue of the amendments sent down from the Lords to the Bill of Uniformity.—*Commons' Journals*, viii. 408.

1662, April 17.

The House then resumed the consideration of the residue of the amendments sent from the Lords to the Bill of Uniformity.

[The amendments are described by line.]—*Commons' Journals*, viii. 409.

April 18.

The House resumed the consideration of the amendments to the Bill.—*Ibid.*

April 19.

The House debated on amendments and additions to the Bill.—*Ibid.* p. 411.

April 21.

The House proceeded to discuss the rest of the amendments to the Bill.—*Ibid.*

April 22.

The House proceeded upon the amendments to the Bill of Uniformity.

"The proviso as to the dispensation with deprivation for not using the cross and surplice was read the second and third time. The question being put whether the question concerning amendments to be made to this proviso should be now put, it passed in the negative. The main question being put for agreeing with the Lords as to this proviso concerning the cross and surplice, it passed in the negative.—*Ibid.* p. 413."

April 24.

The House proceeded with the amendments to the Bill for Uniformity.—*Ibid.* p. 413.

April 26.

The House resumed the debate upon the amendments to the Bill of Uniformity.—*Ibid.* p. 414.

April 28.

The House resumed the matter upon the Bill of Uniformity. . . .

. . . . A proviso for being uncovered and for using reverent gestures at the time of divine service was twice read. But the matter being held proper for the Convocation; *Ordered*: That such persons as shall be employed to manage the conference with the Lords do intimate the desire of this House, that it be recommended to the Convocation to take order for reverent and uniform gestures and demeanours to be enjoined at the time of divine service and preaching.

The Bill with its amendments and additions was referred to a committee for arrangement, and they were directed to prepare instructions for a conference to be had with the Lords.—*Commons' Journals*, viii. 415.

April 29.

Ordered that the report from the committee upon the Bill of Uniformity be heard to-morrow morning.—*Ibid.* p. 416.

April 30.

Serjeant Charlton reports from the Committee which were appointed to peruse the amendments made by this House to the amendments and provisos sent from the Lords to the Bill of Uniformity, and to draw up instructions and reasons to be insisted on at the Conference to be had with the Lords upon the said amendments, the several reasons which were agreed upon by the Committee to be insisted on, which were allowed by this House. Ordered that Mr. Herbert do go up to the Lords to desire a conference upon the amendments to the Bill of Uniformity. Mr. Herbert reports from the Lords that they had consented to a present conference in the Painted Chamber upon the amendments to the Bill for Uniformity.—*Commons' Journals*, viii. 417.

A message was brought from the House of Commons by James Herbert, Esquire, and others, to desire a conference concerning the Bill for Uniformity. The answer returned was, that this House will give the House of Commons a present conference in the Painted Chamber.—*Lords' Journals*, xi. 441.



Next the House was adjourned during pleasure and the Lords went to the conference with the House of Commons, which being ended, the House was resumed. Ordered that the report of this conference shall be made on Friday morning next.—*Ibid.*, p. 442.

May 6.

A message was brought from the House of Commons by Sir Thomas Meares and others to put their Lordships in mind of giving dispatch to the Bill for Uniformity, as conceiving it to be of great consequence, and the rather because they believe they shall not sit long.—*Lords' Journals*, xi. 445.

May 7.

The Lord Privy Seal made a long report of the effect of the conference with the House of Commons concerning the Bill for Uniformity. [A long notice of amendments on the Bill and of differences of opinion follows; but most of these would be unintelligible without copies of the original and amended bills; nor do any of them illustrate the matter in hand, except the last:]

"He (the manager of the conference for the Commons) did from the House of Commons desire their lordships that they would recommend to the Convocation the directing of such decent gestures to be used in time of divine service as was fitting. He found one mistake in the Rubrick of Baptism, which he conceived was a mistake of the writer [persons] being put instead of [children].

"And having thus far dissented from their Lordships in decimo sexto, he came to an agreement in folio, giving the Commons' consent that their Lordships should annex to the Bill that book sent to the Commons by your Lordships, and so at length came to a final concord by his silence, which put an end to that conference.

"Ordered that the alterations and the matter of the conference shall be read and taken into consideration to-morrow in the afternoon."—*Lords' Journals*, xi. 448-450.

May 8.

The amendments and alterations in the Bill of Uniformity brought from the House of Commons at a conference, and reported yesterday, were now read twice; and for better consideration hereof, the House was adjourned into a committee during pleasure; and being resumed, the question being put whether this House agrees with the House of Commons in the clause concerning schoolmasters with the alterations and amendments; It was resolved in the affirmative.

The next question was put, whether this House agrees to all the rest of alterations and amendments, as came up from the House of Commons. It was resolved in the affirmative.

Then the said alterations and amendments in the said Bill of Uniformity were read the third time; and the question being put whether this House agrees to these alterations and amendments, it was resolved in the affirmative.

Whereas it was signified by the House of Commons at the Conference yesterday that they found one mistake in the Rubrick of Baptism which they conceive was a mistake of the writer, *Persons* being put instead of *children*. The lord bishop of Durham acquainted the House that himself and the lord bishop of St. Asaph and the lord bishop of Carlisle had authority from the Convocation to mend the said word, averring it was only a mistake of the scribe, and accordingly they came to the clerk's table and amended the same.

Whereas it was intimated at the Conference yesterday, at the desire of the House of Commons, that it be recommended to the Convocation to take order for reverend and uniform gestures and demeanours to be enjoined at the time of divine service and preaching; it is ordered by this House and hereby recommended to the lords the bishops and the rest of the Convocation of the clergy, to prepare some canon or rule for that purpose, to be humbly presented to His Majesty for his assent.—*Lords' Journals*, xi. 450, 451.

This being Ascension Day the House of Commons had adjourned over till Friday morning.—*Kennett*, 678-680. *Lords' Journals*, xi. 451.

May 10.

The Lords notified to the Commons that they had agreed to their amendments, alterations, and provisos to the Bill of Uniformity.

May 10 and 12.

[The Convocations agreed to present to the House of Commons the canon of 1604 "de solenni reverentia inter liturgiae publicæ celebrationem," in an amended form. The royal assent was given to the Act of Uniformity, which included in the preamble a rehearsal of the King's reference to Convocation, on the 19th of May, on which day the Parliament was prorogued.]

1675, 27 Charles II., Nov. 19.

"Ordered by the Lords Spiritual and Temporal in Parliament assembled, that his Majesty be humbly moved from this House that he would be pleased to direct the Lord Archbishop of Canterbury and the Lord Archbishop of York that the Convocation of the clergy may meet frequently; and that writs may issue out for supplying the places of such members of Convocation as are dead or removed; and that when they are met they do make unto the King's Majesty such representations as may be for the safety of the religion established."—*Lords' Journals*, xiii. 30.

1677, 29 Charles II., Feb. 22.

The Order of November 19, 1675 was repeated in the same words.—*Ib.* p. 50.

Feb. 23.

"Ordered by the Lords Spiritual and Temporal in Parliament assembled that the Lords with white staves who were present this day be and are hereby appointed to wait on His Majesty with the address of this House concerning the sitting of the Convocation."—*Ib.* p. 52.

Feb. 26.

"The Lord Treasurer reported to this effect, that his Lordship and the other Lords with white staves have presented the humble address of this House to His Majesty concerning the Convocation. And his Majesty is



pleased to return this answer, that he will give command that the places vacant in the Convocation be filled up, and that they meet frequently and go upon the work which is proper for them to do."—*Lords' Journals*, xiii. 54.

1679, 31 Charles II. March 12.

"Ordered that the Lords of the Bishop's Bench do prepare a Bill to be presented to this House, whereby the members of the Convocation may be enjoined to take the oaths of allegiance and supremacy, and subscribe the declaration, according to the directions of the Act for the more effectual preservation of the King's person and government, by disabling Papists from sitting in either House of Parliament.—*Lords' Journals*, xiii. 459.

March 19.

"Hodie 1<sup>a</sup> vice lecta est Billa, An Act disabling any person from sitting in either House of Convocation till he hath taken the oaths and made and subscribed the declaration herein contained.—*Ib.* p. 465.

March 20.

The Bill was read a second time and committed, the Committee to have "power to add such clauses thereunto as they shall think fit, relating to the Clergy or University, and to report the same to the House."—*Ib.* p. 467.

March 26.

The Bill was brought up amended, the amendments were read twice, and it was ordered to be ingrossed. "And my Lord Bishop of Bath and Wells asked leave to bring in another Bill to include more of the clergy, which was granted."—*Ib.* p. 479.

March 27.

The Bill was read a third time and passed by the Lords, *ib.* p. 482. The same day it was sent to the Commons.—*Commons' Journals*, ix. 577 ; it was read twice on the 3rd of April, *ib.* 584 ; committed April 8 ; *ib.* 588. On the 22nd it was reported, with amendments, and recommitted after debate ; *ib.* 600.

1689, 1 Will. and Mar., April 9.

In the House of Commons, "Resolved that a Committee be appointed to prepare an address to give His Majesty thanks for his gracious declarations to maintain the Church of England by law established, and to desire him to continue his care of the same ; and that it be an instruction to the Committee that it be made part of the address that His Majesty be desired to issue out his writs for calling a Convocation, and withal to acquaint His Majesty that it is not their intention thereby to delay their taking into consideration the giving ease to Protestant Dissenters."

A Committee was appointed to present the said address to the House with all convenient speed.—*Commons' Journals*, x. 84.

April 13.

The address was reported from the Committee, was read and amended in the form given below, April 16 ; and it was resolved that the Lords' concurrence be desired to the said address.

Ordered that Mr. Auditor Done do carry up the Address to the Lords for their concurrence.—*Commons' Journals*, x. 86 ; *Lords' Journals*, xiv. 174.

April 15.

The Lords return the Address amended, and the Commons, April 16, agree to the amendments.—*Commons Journals*, x. 91.

1689, 1 Will. and Mar., April 16.

A message was brought from the House of Commons by Auditor Done and others, to acquaint this House that the Commons agree to their Lordships' amendments in the address to be presented to His Majesty.

The said address as it is amended is as follows :—

"May it please your Majesty,

"Your Majesty's most loyal and obedient subjects, the Lords Spiritual and Temporal and Commons, in Parliament assembled, do with utmost duty and affection render to your Majesty our most humble and hearty thanks for your gracious declaration and repeated assurances that you will maintain the Church of England established by law, which your Majesty had been pleased to rescue from that dangerous conspiracy that was laid for her destruction with the hazard of your Royal person.

"And her zeal against Popery having appeared at all times, and more especially of late, beyond the contradiction of her most malicious enemies, it being likewise evident that her loyalty hath always been unquestionable, and that the misfortunes of the last reign can be attributed to nothing more than the endeavours that were used to subvert it ;

"We therefore humbly pray your Majesty will be graciously pleased to continue your care for the preservation of the same, whereby you will effectually establish your throne by securing the hearts of your Majesty's subjects within these your realms, who can no way better show their zeal for your service than by a firm adherence to that Church whose constitution is best suited to the support of this monarchy.

"We likewise humbly pray, that according to the ancient practice and usage of this kingdom in time of Parliament, your Majesty will be graciously pleased to issue forth your writs as soon as conveniently may be, for calling a Convocation of the clergy of this kingdom to be advised with in ecclesiastical matters, assuring your Majesty it is our intention forthwith to proceed to the consideration of giving ease to Protestant dissenters."—*Lords' Journals*, xiv. 177 ; *Commons' Journals*, x. 91.



1689, April 20.

"A message was delivered to this House by the Earl of Nottingham, one of His Majesty's principal Secretaries of State, from the King, which was presently read; viz.

William R. Though I have had many occasions of assuring you that I will maintain the Church of England as by law established, yet I am well pleased with every opportunity of repeating those promises, which I am resolved to perform by supporting this Church whose loyalty I doubt not will enable me to answer your just expectations.

And as my design in coming hither was to rescue you from the miseries you laboured under, so it is a great satisfaction to me that by the success God has given me I am in a station of defending this Church which has effectually shown her zeal against popery, and shall always be my peculiar care; and I do hope the ease you design to dissenters will contribute very much to the establishment of this church, which therefore I do earnestly recommend to you that the occasions of differences and mutual animosities may be removed; and as soon as conveniently may be I will summon a Convocation."—*Lords' Journals*, xiv. 183. *Commons' Journals*, x. 96.

1702, 1 Ann., Nov. 21.

Mr. Speaker acquainted the House that there had been with him this morning the Prolocutor of the Lower House of Convocation and also the Dean of Canterbury, Archdeacon Ottley and Mr. Moor, and brought him the following order:

By the Lower House of Convocation.

Die Veneris Novembris 20, 1702.

Ordered that the Prolocutor the Dean of Canterbury, Archdeacon Ottley, and Mr. Moor do attend Mr. Speaker of the Honourable the House of Commons and return our most humble thanks to him and to that Honourable House for the great favour to the Church and Convocation which they have on all occasions been pleased to express: and particularly for the late regard which they of themselves, without suggestion or solicitation, were pleased to have to the privilege of this House in the case of one of our members who had the misfortune to fall under their displeasure.

Resolved that this House will upon all occasions assert the just rights and privileges of the Lower House of Convocation.—*Commons' Journals*, xiv. 40.

1704, 2 Ann., Feb. 25.

Mr. Speaker acquainted the House that there had been with him yesterday in the evening the Prolocutor of the Lower House of Convocation and four more of the same House, viz., the Dean of Winchester, Doctor Edwards, Principal of Jesus College in Oxon; Doctor Smalldridge, and Doctor Atterbury, who brought him the following order, which Mr. Speaker read to the House, viz.:

By the Lower House of Convocation.

Die Mercurii Februarii 23, 1703-4.

Ordered that Mr. Prolocutor, Mr. Dean of Winchester, Doctor Edwards, Doctor Smalldridge, and Doctor Atterbury, do attend Mr. Speaker of the Honourable House of Commons, and acquaint him that after the clergy's having waited on Her Majesty with their most humble sense of her unexampled bounty to her poor clergy, the Lower House of Convocation cannot but take notice with how much kindness and generosity yourself, Sir, and the Honourable House of Commons had prevented them by your address upon the same subject, wherein you have been pleased not only to express your readiness to assist and further Her Majesty's most charitable intentions, but so far likewise to espouse the interest of the clergy as to pay your own most hearty thanks on their behalf.

Our House, Sir, commands me to return their most humble acknowledgments to you and to that Honourable House for this so singular a favour, which you have enlarged by promising to pursue such methods as may best conduce to the support, honour, interest, and future security of the Church of England as now by law established; and they beg leave at the same time with the most sensible gratitude to profess that they cannot have any greater assurance of what your Honourable House has now promised than the constant experience they have had of what it always has performed.

J. ALDRICH, Prolocutor.

*Commons' Journals*, xiv. 356, 357.

1711, 9 Ann., March 1.

Mr. Speaker acquainted the House that there had been with him yesterday in the evening the Prolocutor of the Lower House of Convocation with Dr. Stanhope, dean of Canterbury, Dr. Stanley, archdeacon of London, Dr. Smalldridge, proctor for the Chapter of Lichfield, and Dr. Delaune, proctor for the diocese of Oxford, and brought him an order and a message, which are read, and are as follow:—

February 28, 1710.

It was ordered by the Lower House of Convocation that the Prolocutor, attended by Dr. Stanhope, dean of Canterbury, Dr. Stanley, archdeacon of London, Dr. Smalldridge, proctor for the Chapter of Lichfield, and Dr. Delaune, proctor for the diocese of Oxford, should wait upon Mr. Speaker of the Honourable House of Commons, and impart to him the following message, agreed to by the House, nemine contradicente:—

Tho. Rous, Actuar. Domûs infer. Convocationial.

"Mr. Speaker, the Lower House of Convocation have with great satisfaction taken notice of an instruction given by the Honourable House of Commons to a committee (appointed to examine a petition of the minister and churchwardens of Greenwich praying relief for the rebuilding of that church) to consider what churches are wanting within the cities of London and Westminster and suburbs thereof, and report the same to the House. It was in our thoughts to have done what in us lay towards setting forward so pious a design; but



we are glad to find ourselves happily prevented by the zeal of that Honourable House, which at the time that they placed you in the Chair gave us an earnest of their entire disposition to do everything that might be for the honour and advantage of the Church of England.

"We do, in the name of the whole clergy of this province, return our unanimous thanks to the Honourable House of Commons, for this instance of the affectionate regard they have shown to the welfare of the established Church and the common interests of religion.

"Mr. Speaker, I am directed by the clergy of the Lower House of Convocation to signify their readiness to promote the good work now in view by imparting such lights as they are able to afford in relation to the extreme want of churches in and about these populous cities, under which we at present labour.

"Francis Atterbury, Prolocutor."

Resolved: That this House will receive all such informations as shall be offered to them from the clergy of the Lower House of Convocation with relation to the want of churches in the cities of London and Westminster and suburbs thereof.

Resolved: That this House will, in all matters immediately relating to religion and the welfare of the Established Church, have a particular regard to such applications as shall at any time be made to them from the clergy in Convocation assembled, according to the ancient usage, together with the Parliament.—*Commons' Journals*, xvi. 528, 529.

## HISTORICAL APPENDIX (VI.).

### A Collection of Cases illustrative of the manner in which Matters relating to the Doctrine Ritual and Discipline of the Church of England have been dealt with by the Temporal Courts since the middle of the 15th Century. By the Secretary.

This collection (made by the Secretary at the request of Canon Stubbs, as one of the returns promised by him) contains a few only of the more important cases which fall under the heads specified. It is not, however, believed that any further points of importance would be elucidated by adding to the present selection.

[K.B.]

KEYSER'S CASE.

1465.

*Mich. 5, Ed. IV.*  
*Rot. 143.*

*Heresy.—Habeas Corpus.*

[1.]—"John Keyser was excommunicated by the greater excommunication before Thomas Archbishop of Canterbury, and legate of the Apostolique See, at the suit of another, for a reasonable part of goods, and so remained eight months; the said Keyser openly affirmed that the said sentence was not to be feared, neither did he fear it. And albeit the Archbishop, or his commissary, hath excommunicated me, yet before God I am not excommunicated: and he said that he spake nothing but the truth, and it so appeared; for that he the last harvest standing so excommunicate, had as great plenty of wheat, and other grain, as any of his neighbours, saying to them in scorn (as was urged against him) that a man excommunicate should not have such plenty of wheat. The Archbishop denying these words to be within the said Act of 2 Henry IV. [c. 15 'Suppression of Heresy' repealed by 1 Eliz. c. 1. sec. 6] did by his warrant in writing comprehending the said cause, by pretext of the said

Act commit the body of the said Keyser to the gaol at Maidstone, for that (saith he) in respect of the publishing of the said words *dictum Iohannem non immerito habemus de hæresi suspectum*. By reason whereof the said John Keyser was imprisoned in Maidstone Gaol, and in prison detained under the custody of the keeper there, until by his counsell he moved Sir John Markham, then Chief Justice of England, and other the judges of the King's Bench, to have an *Habeas Corpus*, and thereupon (as it ought) an *Habeas Corpus* was granted; upon which writ the gaoler returned the said cause, and speciall matter, and withall, according to the writ, had his body there. The court upon mature deliberation perusing the said statute (and upon conference with divines) resolved, that upon the said words Keyser was not to be suspect of heresy, within the said statute, as the Archbishop took it. And therefore the court first bayled him, and after he was delivered; for that the Archbishop had no power by the said Act for those words to commit him to prison." *Cokes Institutes, Part III., cap. 5, "Of Heresy."*

The return to the Habeas Corpus is given in *Tremaines Pleas of the Crown*, page 351.



[C.P.]

WARNER v. VAUGHAN.

1495.  
*Mich. II. Henry VII.*  
*Rot. 327.**Heresy.—False Imprisonment.*

[2.]—"Hillary Warner being an inhabitant within the parish of S. Dunstan's in the West, held opinion and published there, and in divers other places, *quod non tenebatur solvere aliquas decimas curatori sive ecclesiæ parochiali ubi inhabitat*. Whereupon Richard Bishop of London, commanded Edward Vaughan and others to arrest the said Hillary Warner; by force whereof they did arrest him, and kept him in prison a day and a night, and then he escaped. Hillary Warner brought his action of false imprisonment against Edward Vaughan and others; in bar whereof the defendants pleaded the statutes of 2 Henry IV., and that the plaintiff held and published the opinion aforesaid; which opinion was, *contra fidem Catholicam, seu determinationem sanctæ ecclesiæ*, and that the defendants, as servants to the said bishop, and by his commandment did arrest the plaintiff, and justified the imprisonment; whereupon Hillary Warner, the plaintiff, demurred in law, and after long and mature deliberation it was by Brian, Chief Justice, and the whole Court of Common Pleas, adjudged that the said opinion was not within the said statute of 2 Henry IV. for that it was an error, and no heresy." *Cokes Institutes, Part III., c. 5, "Of Heresy," and see Year Book 10 Henry VII., f. 17, 18.*

Also see as to this and the preceding case *Bradstones' Case* (in 1614) II., *Bulstrodes' Reports*, 300, and 1 *Rolls Reports*, 110, where they are cited by Coke, C. J., and commented on; and where it is stated that "upon this statute the heresy ought to be " in a fundamental matter of faith."

[K.B.]

ANONYMOUS.

1535.  
*Mich. 27, Hen. VIII.**Heresy.—Slander.*

[3.]—"An action on the case was brought for that the defendant called the plaintiff 'Heretic and one of the novel learning.' Wilby demanded whether the action lies here seeing that it is a spiritual matter. *Fitzherbert* and *Shell*. 'It is clear that this action ' does not lie here, for it is merely spiritual. And ' if the defendant should justify that the plaintiff is ' an heretic and shall allege in what respect, we ' could not discuss whether it be heresy or no; but ' if were a matter where we could determine the ' principle as "thief" or "traitor" or such like, for ' those an action lies here, for we have consnance of ' what matter is treason or felony, but if it be for ' calling him "adulterer," or as the case is here, no ' action lies for the aforesaid reason.' *Fitzherbert*, ' some matters are mixed and punishable by both ' laws, as if one says that another is a bawd or such ' like, and for those one can choose where he will ' bring his case.' Note that they agreed in this case, where one is indicted for heresy before the justices they will not do anything upon that, but will certify it to the ordinary, and the indictment will only be evidence against the person indicted. Which note."

Translated from the *Year Book, Mich. 27, Henry VIII., f. 146.*

[Q.B.]

PALMER v. THORPE.

1583.  
*Trin. 25 Eliz.**Slander.—Jurisdiction of Ecclesiastical Court.*

[4.]—"To spiritual defamation there are three incidents:—1st, that it concern matter merely of ecclesiastical cognizance, as for calling one heretic,

adulterer, schismatic, etc.; 2nd, that it concern matter merely spiritual only; for if it relates to anything determinable at common law, the ecclesiastical judge shall not have cognizance thereof; 3rd, that the party cannot sue there for damages or amends, but only for punishment of the sin, *pro salute animæ*—4 *Coke's Reports*, 20.

[Q.B.]

FLEMMINGS' CASE.

1584.  
*Mich. 26 & 27, Eliz.**Act of Uniformity—Baptism.*

[5.]—"Flemming was indicted upon the statute of 1 Elizabeth because he had given the Sacrament of Baptism in other form than is prescribed by the said statute, and in the Book of Common Prayer, and the said indictment was before the Justices of Assize, Wray and Anderson, of such offence done before, and now he is indicted again; for which it was awarded that he suffer imprisonment for a year, and shall be adjudged, *ipso facto*, deprived of all his spiritual promotions."—1 *Leonard's Reports*, 295.

[Q.B.]

ANONYMOUS CASE.

1586.  
*Hil. 29 Eliz.**Act of Uniformity—Baptism.*

[6.] "Exceptions were taken by Fuller to an indictment upon the statute of 1 Elizabeth, cap. 2, for the omitting of the crossing of a child in baptising of him. The case was, that a minister out of his cure, at another church, viz., at Chelmsford, in Essex, did baptize a child without the sign of the crosse; for which he was indicted. The first exception was, that the statute speaks of ministers which do not use the administering of the Sacrament in such cathedral churches, or parish churches, as he should use to administer the same; that this was not the parish church in which he should use the same. *Suit J.* was of opinion, that it was good, notwithstanding that, for otherwise the statute might be greatly defrauded. The words of the statute are farther 'or shall wilfully or obstinately, standing in ' the same, use any other rule, ceremony, order, ' forme, etc.' 2. He took another exception upon those words; for the omitting of the crossing only is put, and it is not showed that he used any other rite or ceremony, etc., for there ought to be some positive thing. 3. He doth not show the place or parish where he persisted in it, and that is material and issuable, etc."—*Godbolt's Reports*, 118.

[Q.B.]

SPECOT v. THE BISHOP OF EXETER.

1589.  
*Hil. 32 Eliz.**Quare Impedit.—Heresy.—How determined.*

[7.]—"Although it doth not appertain to the King's Court to determine schisms or heresies, yet the original cause of the suit being matter whereof the King's Court hath consnance, the cause of the schism or heresy, for which the presentee is refused, ought to be alledged is certain, to the intent that the King's Court may consult with divines to know whether it be schism or not; and if the party be dead, thereupon to direct the jury that try it." And accordingly a plea that the presentee was "*schismaticus inveteratus*" was held bad for uncertainty.—5 *Coke's Reports*, 57.

Upon this point Coke, in the 2nd Institutes, 631, says: "If the cause of refusal be for default of learning, or that he is an heretick, schismatick, or the like, belonging to the knowledge of ecclesiastical law, there must he give notice thereof to the patron,



“ but if the cause be temporal, as a felon, homicide, or other temporal crime; or if the disability grow by any Act of Parliament, or other temporal law, there no notice ought to be given, unless notice be prescribed to be given thereby. But in a *quare impedit* brought against the bishop, for refusal of the clerke, he must show the cause of his refusal specially and directly (for whether the cause thereof be spiritual or temporal, the examination of the bishop concludes not the plaintiff) to the intent the court, being judges of the principal cause, may consult with learned men in that profession, and resolve whether the cause be just or no; or the party may deny the same, and then the Court shall write to the Metropolitan to certifie the same; or if the cause be temporal, and sufficient in law (which the Court must decide) the same may be traversed and an issue thereupon joined, and tried by the country. And yet, in some cases, notwithstanding this statute (Articul<sup>i</sup> Cleri 9 Edw. II. c. 13), *idoneitas personæ* shall be tried by the country, or else there should be a failure of justice (which the law will never suffer) as if the inability or insufficiency be alleged in a man that is dead, this case is out of this statute; for the bishop cannot examine him, and the words of this Act be ‘*De idoneitate personæ presentatæ ad beneficium ecclesiasticum pertinet examinatio ad judicem ecclesiasticum et ita est hactenus usitata et fiat in futurum.*’ And, consequently, though the matter be spiritual, yet shall it be tried by a jury, and the Court being assisted by learned men in the profession, may instruct the jury as well of the ecclesiastical law in that case, as they usually do of the common law.”

And see Nos. 22 and 24 Post.

[Q.B.]

CAUDREY'S CASE.

1590.  
Hil. 33 Eliz.  
Rot. 340.

*The King's Ecclesiastical Law.*

[8.]—“ One Caudrey was deprived for preaching against the common prayer; held that though there was another punishment appointed by the statute, and not deprivation until the second offence, the Bishop of London and his colleagues by virtue of the high commission to them and others directed, might proceed by the ecclesiastical law, and deprive him for the first, it being against the duty of his office as a minister, and they having power to purge their body of all scandalous members.

It was resolved: that the Act of the first year of the late Queen concerning ecclesiastical jurisdiction, was not a statute introductory of a new law, but declaratory of the old, which appeareth as well by the title of the said Act, *videlicet*, an “ Act restoring to the crown “ the ancient jurisdiction over the state, ecclesiastical “ and spiritual, &c.” As also by the body of the Act in divers parts thereof. For that Act doth not annex any jurisdiction to the crown, but that which in truth was, or of right ought to be by the ancient laws of the realm parcel of the king's jurisdiction, and united to his imperial crown, and which lawfully had been, or might be, exercised within the realm; the end of which jurisdiction, and of all the proceeding thereupon was, that all things might be done in causes ecclesiastical to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this realm, as by divers parts of the said Act appeareth: and therefore as by that Act no pretended jurisdiction exercised within this realm, being either ungodly or repugnant to the prerogative or the ancient law of the crown of this realm, was or could be restored to the same crown, according to the ancient right and law of the same, so if that Act of the first year of the late Queen had never been made, it was resolved by all the judges that the King or Queen of England, for the time being, may

make such ecclesiastical commission as is before mentioned, by the ancient prerogative and law of England. And therefore by the ancient laws of this realm, this Kingdom of England is an absolute empire and monarchy consisting of one head, which is the king, and of a body politic, compact and compounded of many, and almost infinite several, and yet well agreeing members; all which the law divideth into two several parts, that is to say, “ the clergy and the laity,” both of them, next and immediately under God, subject and obedient to the head; also the kingly head of this politic body is instituted and furnished with plenary and entire power, prerogative and jurisdiction, to render justice and right to every part and member of this body, of what estate, degree, or calling soever, in all causes ecclesiastical or temporal, otherwise he should not be a head of the whole body. And as in temporal causes, the king, by the mouth of the judges in his courts of justice doth judge and determine the same by the temporal laws of England, so in causes ecclesiastical and spiritual, as namely, blasphemy, apostasy from christianity, heresies, schisms, ordering admissions, institution of clerks, celebration of divine service, rights of matrimony, divorces, general bastardy, subtraction and right of tithes, oblations, obventions, dilapidations, reparation of churches, probates of testaments, administrations and accounts upon the same, simony, incests, fornications, adulteries, solicitations of chastity, pensions, procurations, appeals in ecclesiastical causes, commutation of penance, and others (the consueance whereof belongs not to the common laws of England), the same are to be determined and decided by ecclesiastical judges, according to the king's ecclesiastical laws of this realm; for as the Romans fetching divers laws from Athens, yet being approved and allowed by the estate there, called them notwithstanding *Jus Civile Romanorum*, and as the Normans borrowing all or most of their laws from England, yet baptised them by the name of the laws and customs of Normandy; so albeit, the kings of England derived their ecclesiastical laws from others, yet so many as were proved, approved, and allowed here, by and with a general consent, are aptly and rightly called the king's ecclesiastical laws of England, which whosoever shall deny, he denieth that the king hath full and plenary power to deliver justice in all causes to all his subjects, or to punish all crimes and offences within his kingdom; for that as before it appeareth the deciding of matters so many, and of so great importance, are not within the consueance of the common laws, and consequently that the king is no complete monarch, no head, of the whole and entire body of the realm.”—5 *Coke's Reports*, xv.

[Q.B.]

FULLER'S CASE.

1592.  
East. 35 Eliz.

*Spiritual Matters.—Jurisdiction.*

[9.]—“ It was resolved when there is any question concerning what power or jurisdiction belongs to ecclesiastical judges, in any particular case, the determination of this belongs to the judges of the common law, in what cases they have cognizance, and in what not; for if the ecclesiastical judges shall have the determination of what things they shall have cognizance; and that all that appertains to their jurisdiction, which they shall allow to themselves, they will make no difficulty, *ampliare jurisdictionem quam*; and according to this resolution, Bract. lib 5. *Tract de except.* cap. 15, fol. 412. ‘*Cum judex ecclesiasticus prohibitionem a Rege suscepit, supersedere debet in omni casu saltem donec constiterit in curia Regia ad quam pertinet jurisdictionem; quia si judex ecclesiasticus aestimare debet an sua esset jurisdictio, in omni casu indifferenter procederet, non obstante Regia prohibitionem.*’ Vide Entries, fol. 44. There was a question whether the Court Christian should have



cognizance of a lamp. And a prohibition was granted, 'Quod non procedant in Curia Christianitatis, quosque in curia nostra discussum fuerit utrum cognitio placiti illius ad curiam nostram vel ad forum ecclesiasticum pertineat.' And so the determination of a thing, whether it belongs to the Court Christian, doth appertain to the judges of the common law, and the judges of the common law have power to grant a prohibition. And all this appears in our books, that the judges of the common law shall determine in what cases the ecclesiastical judges have power to punish any *pro lesione fidei* (breach of faith), 2 Hen. IV., fol. 10. 11 Hen. IV. f. 88. 22 Ed. IV. 20."—XII, *Coke's Reports*, 41.

[C.P.]

1592.

DAVIS v. GARDINER.

*Trin. 35 Eliz.**Slander.—Heresy.*

[10.]—"If a divine is to be presented to a benefice, and one to defeat him of it, says to the patron that he is an heretic, or a bastard, or that he is excommunicated, by which the patron refuses to present him (as well he might if the imputations were true) and he loses his preferment, he shall have his action on the case for these slanders tending to that end."—IV. *Coke's Reports*, 16 b.

This would involve trying the question heretic or no heretic, if the defendant justified. And see *Tasbrough's Case* (1619), 2 *Rolles Reports*, 43.

[Ex.]

1607.

TROLLOP v. RICHESON.

*Mich. 6 Jac. 1.**Debt.—Plea of Excommunication.*

[11.]—"It was objected that excommunication is a spiritual judgment, and therefore the temporal judges shall not dispute upon the manner of it. To which it was answered and resolved, that judges of the common law shall adjudge upon the manner and (in some cases) of the matter also of the certificate [of the bishop] in case of excommunication, as if the bishop himself be sued, and he pleads an excommunication by himself or by his commissary (who is as his deputy) although it be for another cause than is then in question, it shall not disable the plaintiff because he himself is party; and therewith agree. 16 Ed. III., Excom. 5, 5 Ed. II., Excom. 27, 5 Ed. III., 8, 8 Ed. III. 69, 18 Ed. III. 58, 9 Henry VII. 21b, 10 Henry VII. 9a. Also if a prohibition be brought against a bishop and he shows forth the letters of the archbishop that the plaintiff is excommunicated, *propter diversas contumacias*, without showing any cause in special of the excommunication, it shall not disable the plaintiff. The same law if any other be defendant in any action, and would disable the plaintiff by excommunication, he ought to show the bishop's certificate, containing the speciality of the principal cause for which the plaintiff is excommunicated, to the end that the judges of the law may know whether the spiritual court have conusance of the original cause: and if the excommunication be against law the court ought to write to them to absolve the party; which they cannot do if the certificate be general; and if the bishop refuses it, his temporalities at the common law shall be seized. 28 Ed. III. 97a, 22 Ed. IV. 20b, 20 Ed. III. Excom. 9, 13 Henry VII. 16b, and in 14 Henry IV. 14b. Hanks there saith that a doctor of the civil law told him that no letter of certificate of excommunication (although it be of the bishop) should be allowed, if the principal cause be not contained in the writ, F.N.B. 647. The bishop ought to express the cause and suit against the plaintiff special in the certificate.

R 8592.

Vide 3 Henry IV. 3b, mistaken in the report; for the opinion there is reformed in 14 Henry IV. 14 as appears before, vide *Fleta* lib. VI. 26. West. 2 cap. 43."—VIII. *Coke's Reports*, 68a.

[C.P.]

1617.

SLADE v. DRAKE.

*Mich. 15, Jac. 1.**Rot. 2438.**Prohibition.—Heresy.*

[12.] "For this is regular for difference between the King's Courts and the Courts Ecclesiastical, that though a spiritual cause cannot originally and primitively fall into the King's Court, as for calling a man 'heretick' he shall not have an action on the case (cites No. 3 ante), yet if a civil action be well commenced, as in the cases cited, a *Quare Impedit*, or an action of false imprisonment, if anything fall accidentally that is spiritual, the King's Court shall continue the plea upon it either by jury or by demurrer, except in case where the law hath provided trial by ecclesiastics, as by the issue upon bastardy, n'unes accouple, etc., literature, and the like. In which cases the bishops are not judges but ministers of the King's Courts as other kinds of triers are; whereupon the court proceeds to judgment according to their certificates and trials."—*Hobart's Reports*, Part I., No. 371, 296.

[K.B.]

1622.

SHIPDEN'S CASE.

20 Jac. 1.

*Prohibition.—Excommunication for not wearing a veil while being churched.*

[13.] "Le Chancellor de Norwich fait un ordinance, et ceo publish en Norwich, que chescun feme, que vient al esglise d'estre churched apres childe bearing, solonque le ley d'esglise de Anglittere, viendra coverd ove un white vayle; et le dit Eliz. Shipden esteant admonish de ceo, refuse luy conformer; fur que contempt fuit excommunicate; et un certificate fait de ceo al Chancery; sur q: un bre: de excommunicato capiendo fuit d'estre agard vers luy, et p: ceo preventer, et d'estre assoyled, el pria un prohibition per motion de Sergeant Otto in B. R., alledging que est un novel ley, nient allowed per aucun custome on canon, on auter ley de esglise de Anglittere; et dit que est prerogative de cest court mayntainer freedom de subjects del forreigne innovations, et concluder chescun court deins lour bounds; mes il offer al court, que si soet aucun custome on ley d'esglise de Anglittere, que ceo command, que sa clyent ceo voil obey: mes quia fuit novel case, que ferra un president, les judges desire d'aver le resolution de Archeveque de Canterbury; et it convene tous les eveques que fueront at London; et il m.; et 6 auter evsques resolve, et certify, que fuit le ancient custome de esglise de Anglittere, que femes viendront vailed at esglise d'estre churched; et cest resolution fuit declared per Lea C. J. in court, et sur ceo le prohibition denyed d'estre granted."—*Palmer's Reports* 297.

The account of this case in *Rolles Abridgement* is somewhat different, it is as follows:—

*Prerogative le Roy.*

(Q.) Ordinary and power de l'ordinary.

"1. Le ordinary de luy mesme sans aucun canon on custome ne poit command aucun lay home de observer aucun novel ceremony en l'esglise.

"2. Come si l'ordinary command que nul feme apres el ad ew un enfant serra churched si el quant el vient deins le huis del esglise ne luy mist sur ses genuls, et fait ses orizons vers le orient, et aussi vient



en un vaile, cest command nest loyal, pur ceo que la nest aucun custome apres le temps de reformation, nec aucun canon pur ceo, et aussi le manner de churching est ordeine per le livir de Common Prayer, qui est confirme per le statut de 1 Eliz. et l'ordinary de luy mesme n'ad aucun tiel power a imposer tiel novel ceremonies sur le layety. P. 20 Jac. B. R. en un Shipdam's case le feme de un Alderman de Norwich, que fuit excomenge per le Chancelor la ex officio: resolve per Leigh et Chamberlain contra Houghton. Et jour done pur que prohibition ne serra grant. Mes fuit stay pur ceo que ceo fuit certifie per divers eveques d'estre le common custom del esglise de Engleterre."—*Rolls Abridgement*, 221.

[C.P.]

SIR EDWARD COKE'S CASE.

1625.

*Mich. 1 Car. I.**Oath of Office.—Suppression of Heresy.*

[14].—"Sir Edward Coke, late Chief Justice of the Common Pleas, and afterwards of the King's Bench, and removed from his places, being made sheriff of the County of Buckingham, had a *dedimus potestatem* to take his oath annexed to a schedule; to which he took exceptions, for that there were more additions to the said oath than were in the ancient oath which is in the register, and afterwards confirmed and appointed by the statute of 18 Edw. 3 cap. 4; he therefore conceived there ought not to be such additions unless by Parliament. The additions were:—

"First, 'That he should seek to suppress all errors and heresies commonly called Lollories, and should be assistant to the commissaries and ordinary in Church matters,' which part of the oath was added by reason of the statute of 5 Rich. 2, St. 2, c. 5, and 2 Henry 4. c. 15, whereby it is appointed that the same should be taken by the sheriff, especially for those two causes. But he thereto certified, that those statutes are repealed by the statute of 1 Edw. 6. c. 1, and 1 Eliz. c. 2, and therefore ought not to be taken."

[There are three other exceptions taken which are not here material.]

"Upon these exceptions the Lord Keeper assembled all the justices to confer with them about the same. And as touching

The first point, they conceived it was fit to be omitted out of the oath, because it is appointed by statutes which are repealed, and were intended against the religion now professed and established, which before was condemned for heresy and is now held for the true religion."—*Croke's Reports*, 4th Edition, Vol. I., 26.

As to this case Collier in his *Ecclesiastical History*, Vol. II., page 93, says that it is a famous instance of the ignorance of the common lawyers "For Lollardism "is widely different from the Doctrine and Constitution of the Church of England."

[K.B.]

WATKINSON v. MERGATRON.

1682.

*East. 34, Car. II.**Prohibition.—Marriage.*

[15].—"The plaintiff sued the defendant in the Ecclesiastical Court at York for marrying his sisters daughter, and the defendant prayed a prohibition, because out of the Levitical degrees; but denied by the whole court, because its a cause of ecclesiastical cognisance, and divines better know how to expound the law of marriages than the common lawyer; and though sometimes prohibitions have been granted in causes matrimonial, yet if it were now *res integra*, they would not be granted."—*Sir T. Raymond's Reports*, 464.

See also the earlier case *Hill v. Good* in C.P. 25 Car. II. (1673) reported in Vaughan's Reports, page 302, in which the marriage laws are discussed at great length, and authorities are cited from the Old and New Testaments and Theological writers

[K.B.]

THE CASE OF MARRIOT

AND

SIR JOHN KNIGHTLEY.

1683.

*Hil. 35, Car. II.**Extreme Unction.—Slander.*

[16].—"This was a writ of error upon a judgment in C.B., upon an action upon the case, for words wherein Knightley declared that he being a justice of the peace and a deputy lieutenant, the defendant spoke of him these words, he standing at that time for knight of the shire, viz., "I have heard that a maid "of Sir John Knightley's, when he was last sick, "looked through the key-hole and saw a priest administering to him the eucharist and extreme unction." Upon *Not Guilty* pleaded, he had a verdict and damages to a 1,000*l.*, and judgment in C.B. upon which this writ was brought. And Holt for the plaintiff in the writ of error, takes the words not to be actionable, for that they subject the plaintiff to no penalty within any statute; and when he mentions those concerning bringing in of Bulls, Agnus Dei, and hearing mass, he said that extreme unction is no part of the mass, nor prohibited by our laws temporal or ecclesiastical, only declared by Articles of the Church not to be a sacrament and so is penance, and that is in itself no more unlawful, than is penance; and for anointing with oil he cited James V., 14, and that using it doth not necessarily conclude him a papist. He cited 1 Brownlow, 12, 4 Rep. 16, 2 Cr. 243, 2 Roll. 43, 3 Cr. 191. Serjeant Jeffries on the other side cited 1 Eliz. and 27 Eliz., 2 Car. 300, Roll 50, 46, 86, 69."

"This case was argued again this term by Pollexfen for the plaintiff in the writ of error, and by William Finch for the defendant; he said that the words were in effect, but thus, "the priest gave Sir John Knightley "the eucharist and extreme unction;" he said that by the word *priest* was intended a priest of the Church of England, i.e., one that hath the administration of things sacred, and so is he stiled in the liturgy; so the eucharist is a thing lawful and commendable to take, so that thus far the words are innocent. Now then the words "extreme unction" must be that whereupon they must adjudge those words actionable, if they are actionable; he said 'tis true it is made a sacrament by those of the Church of Rome, and for that cited *Concil. Trident*, 330. But that the Church of England in the Articles of 1562 owns but two sacraments, yet condemns not the other, and therefore, though in our church extreme unction be not held as a sacrament, yet it may be of itself good and lawful, and for which some men have reason to deduce from scriptures good reasons, and instanced in that of St. Mark XVI. 18, and St. James, cited before by Holt; therefore the use of such a thing as this cannot make a man Papist, which is a name not so much of distinction in matters of religion as of government, for he is a Papist that acknowledges the supremacy of the Pope in matters ecclesiastical; so then the saying he had extreme unction administered to him, is not as much as if he had called him Papist. He said that in the case of *Roe and Clarges*, 'tis true the calling of a justice of the peace Papist is adjudged actionable, for that it was disabling him to execute his office, and laying him open to many penalties; but at common law such words were not punishable in our court as *Heretick* at 4 Rep. 17, 20, and that now they are no further so, than as they are made crimes by statute, but this is not made one by any statute; 'tis true words actionable are become so, if any loss happen;



as to the cases cited, where words spoken of a justice of the peace are actionable, which are not so if spoken of another person, he says all these cases are where they charge upon him a misfeasance in his office as bribery, etc., but to say a thing of a justice of the peace which, if true, he ought not to be justice of the peace, will not be actionable; as to say of a justice of the peace, he hath not 40*l.* per annum, etc. So he remembered the case of calling one buffed-headed justice; but to lay bribery upon a justice of the peace is actionable.

Finch on the other side argued, that it is the sense of the words, and not the words themselves, that makes them actionable, that nobody could otherwise intend those words, than that they meant he is a Papist; that upon an indictment for being a Papist, this given in evidence would be sufficient to convict him. There were these words found likewise, "that the servant maid, etc., *ut supra*, saw a Popish priest administer to him the eucharist and extreme unction," which seemed to be actionable; but being laid to be spoke at several times, and entire damages being given, if the first words are not actionable the judgment ought to be reversed; *curia vult advisare*.

Afterwards the court held the words actionable and affirmed the judgment; for extreme unction, though formerly used by the apostles, is now disapproved of by our Church, and used in no Christian Church but that of Rome, and the words are a description of a Papist, and worse than if he had called him Papist, for that there is an act done which shows him one, and the other might be a word of heat; and in this case it was allowed, that if it were Popish priest, etc., it were actionable.—*Skinner's Reports*, 98 & 111.

[K.B.]

REX v. SPARKS.

1686.

Easter 1 &amp; 2 Jac. 2.

*Act of Uniformity—Using a prayer in the pulpit.*

[17].—The defendant was indicted at the quarter sessions in Devonshire for using in a church *alias preces et alio modo* than prescribed in the Act of Uniformity. He was found guilty and fined one hundred marks. The offence consisted in his reading a prayer in the pulpit. The indictment was quashed by the Court of King's Bench on the ground that "The indictment ought to have alleged that the defendant used other forms and prayers instead of those enjoined which were neglected by him; for otherwise every parson may be indicted that uses prayers before his sermon, other than such which are required by the book of common prayer."—2 *Modern Reports*, 78.

[K.B.]

SHORTER v. FRIEND.

1691.

Trin. 2 Will. &amp; Mary.

*Ecclesiastical Court.—Common Law.*

[18].—"Where a spiritual court hath cognizance of principal they shall have cognizance of the incidents and accessories; but if the incident is a matter merely temporal, they must proceed there according to the course of the common law, and not *secundum jus ecclesiasticum*, for if they do, a prohibition will be granted"—*Carthew's Reports*, 142.

[CHANCERY.]

MIDDLETON v. CROFTS.

1736.

10. Geo. II.

*Canons of 1603.—Convocation.*

[19].—*Per Lord Hardwicke, L.C.*—The canons of 1603 not having been confirmed by Parliament, do not *proprio vigore* bind the laity. The binding force of ancient Canons over the laity was derived from the supreme legislative power being vested in the person of the emperors; but in England it is otherwise where the king has but part of the legislative power.

Ever since the Reformation the rule has been that when any ordinances have been made to bind the laity, as well as clergy, in matters ecclesiastical, they have been either enacted or confirmed by Parliament, of this the several Acts of Uniformity are so many proofs, for by those the whole doctrine and worship, the very rites and ceremonies of the church, and the literal form of the public prayers is established, and it is plain from the several preambles of these Acts, that though the matters were first considered and approved in Convocation, yet the Convocation was only looked upon as an assembly of learned men, able and proper to prepare and propound them, but not to enact and give them force. These Acts further furnish very material proofs that Parliament was of opinion that the power, at the time, at any rate, when they passed them, was in them to make constitutions in ecclesiastical matters to bind the whole nation.

It is also clear from 25 Hen. VIII. c. 19., that both the King and the clergy thought it necessary to have the authority of Parliament for abrogating part of the ancient Canons, and establishing such part as was to remain in force.—2 *Atkyn's Reports*, 650.

[K.B.]

ANONYMOUS CASE.

1795.

36. Geo. III.

*Act of Uniformity.—Public Worship.*

[20].—"At Thetford Lent Assizes 1795, a clerk was indicted upon these statutes (of Uniformity); but the evidence was not that he had left out or added any prayers, or altered the form of worship, but that he did not read prayers twice on a Sunday, but alternately one Sunday in the morning, and the next in the evening, and omitted to read them at all on certain saint days. The learned judge who tried the indictment, Mr. Baron Perryn, observed that it was *primæ impressionis*, and being of opinion that the offence complained of was purely of ecclesiastical cognizance, and not the subject of prosecution in the temporal courts, directed the jury to acquit the defendant, which they accordingly did."—3 *Burn's Ecc. Law*, 430.

[CHANCERY.]

BORAINE'S CASE.

1809.

49 &amp; 50 Geo. III.

*Excommunication.—Writ to obtain absolution.*

[21].—A motion was made, that a writ issue calling upon a bishop to absolve a person wrongfully excommunicated by his court.

*Per the Lord Chancellor (Lord Eldon).*—"The result of my researches upon this subject, which I have looked into very attentively, is that, where the Spiritual Court has excommunicated a person for a cause, for which they have not, by the law of the land, authority to do so, he has a right to some such writ, &c."—16 *Vesey's Reports*, 346.



[K.B.]

REG. v. ARCHBISHOP OF CANTERBURY.

1812.

52 &amp; 53 Geo. III.

*Mandamus.—Learning of Clerk.*

[22.]—*Lord Ellenborough*, “In *Specot’s Case*, it is decided that it is not allowable to plead generally that the clerk presented is an inveterate schismatic. That case was much discussed, and there was great debate among the judges whether a plea pleaded in this generality was good or not. I think the judges were equally divided in the Common Pleas, upon which the opinion of the other judges was taken, when the greater part decided that it was not a good plea, and this judgment was afterwards affirmed in the King’s Bench, upon a writ of error; and it was held, according to the report of the case in *V. Coke* 58 (and which is also reported in *Anderson* 189, and *3 Leonard* 198) that the cause of the schism or heresy, for which the presentee is refused ought to be alleged in certain, to the intent that the King’s Court may consult with divines, whether it be schism or not; and if the party be dead, thereupon to direct the jury to try it, but if it be traversed, and the party refused be alive, it shall be tried by the Metropolitan.

The authority, which belongs to *Specot’s case*, has been certainly questioned, or as the Attorney-General said yesterday, it has been a good deal shaken by the case of *Hele v. The Bishop of Exeter and others*. *Showers Parliamentary Cases*, 88. It was there maintained that it was a good plea on the part of the bishop, that the presentee was *minus sufficiens in literaturâ* without stating in what particulars. It was contended that he should state in what respects he was *minus sufficiens*, &c.; because in case of the death of the party it would not be tried by the archbishop, but must be tried by the jury. It is so laid down certainly in the books, but a trial of that sort has never occurred in our times, nor is there any instance of it, that I am aware of, to be found in our books; and if such a case should happen, it does not occur to me how such a trial could conveniently proceed. Suppose a jury of 12 farmers collected in the jury box, addressing themselves to try the literature of a departed person, how are they to set about it? Are they to try it by evidence of his reputation for literature generally, or are they to try it by the particular documents in proof of his literature, which he may have kept in the shape of Latin or Greek exercises, produced upon his examination before the bishop, and upon which the bishop pronounced at the time when he refused to institute him? It would be somewhat strange to present to the grave attention of such a panel the translation which the deceased may have made from some part of the sacred writings in the Greek tongue, or his Latin composition upon a theme which may have been handed to him by the bishop, to hear counsel haranguing them upon topics of grammatical construction or verbal criticism, and to see them assisted by a judge (who possibly may not himself be very deeply learned in the dead languages), addressing their minds to try whether some learned bishop is right in the judgment he has formed upon the same materials, and sitting as a court of error from him in matters of grammar. I wish that the law books which tell us that it belongs to a judge and jury to decide such points, had at the same time instructed as how we are adequately to perform the task.”—*15 East’s Report*, 117.

These remarks would apply with equal force in cases where it had to be determined whether the clerk was a heretic.

[H.L.]

REG. v. MILLIS.

1844  
7 & 8 Vict.*Ritual—Marriage—Deacon.*

[23.]—*The Lord Chancellor* [*Lord Lyndhurst*]. “A question has been raised as to the celebration of the marriage ceremony by a deacon; and it has been asked, if it was formerly required that the ceremony should be performed by a person in priests orders, by what authority this change was introduced. It appears, by reference to the ancient rituals, that formerly the sacrament was administered before the nuptial benediction was pronounced, and that as this could only be administered by a priest, his presence was necessary. Marriage itself was also, by the mere nature and force of the contract, considered to be a sacrament; and the solemnization, therefore, by a priest, might on this ground have been thought necessary; but when, at the Reformation, it ceased to be considered as a sacrament, and when it was no longer required that the sacrament should be administered at the time of the marriage, there was no reason why the ceremony should not be performed by a person in holy orders as a deacon.”

“It is further to be observed, that in the Act of Uniformity, 13 & 14 Charles II., it is expressly enacted that certain of the offices contained on the Book of Common Prayer shall be performed only by a priest; thereby constructively admitting that the other offices, of which matrimony is one, may be performed by a deacon.”—*10 Clark and Finnely’s Reports*, 859.

[H.L.]

MARSHALL v. THE BISHOP OF  
EXETER.1868.  
31 & 32 Vict.*Sufficiency of Clerk—Quare Impedit—Mode of determining Spiritual Questions.*

[24.]—In *Quare Impedit*, upon a rejection of the patron’s presentee, the bishop’s plea must state not only that the presentee is not a fit person, but also in what respect he is not fit, and state it in such a manner as will enable the patron to take issue on the objection, and a proper tribunal to judge of its soundness.

Opinion of *Willes, J.* “The remedy of the patron is by action at Common Law. To try what? Of course to try, first, whether the patron had the right to present; and, secondly, if so, whether he has presented a fit person. The former is not questioned. Who is to decide the latter? The answer is easy—the Court of Common Law. Therefore, a plea founded upon unfitness must, in the first instance, show an unfitness which the Court can recognize as a disqualification, and not mere inconclusive evidence of unfitness. If the plea sufficiently shows unfitness, then its truth is to be tried either by a jury, if the case be a crime, or by the certificate of the metropolitan if it be insufficiency, for which purpose the Court of Common Law, according as the case may be, either summons a jury or sends a writ to the metropolitan, commanding him in the Queen’s name to try the question, and to certify the result to the Court. And that inquiry must take place according to legal rules of evidence; for even in cases within the jurisdiction of the Ecclesiastical Courts, the Courts of Common Law restrain those courts by prohibition when they require evidence unconnected with the common law, as for instance, two witnesses to a payment.”

Judgment of *Lord Chelmsford*. “The cause shown by the bishop in his plea must be one upon the sufficiency of which, in point of law, the court may decide, or which may be traversed and issue joined upon it, to be tried, if the cause be spiritual, by the certificate of the archbishop, and if temporal, by a jury.”—*Law Reports*, 3 *H of L*, 17.



[C.P.]

COPE *v.* BARBER.1872  
35 & 36 Vict.*Ritual—Offertory—Construction of Rubric.*

[25.]—*Willes, J.* “The only question for the opinion of the court is, whether the magistrates ought to have convicted the respondents upon an information charging that they on a certain day ‘unlawfully did molest, let, disturb, vex, and trouble F. A. Cope, then being a clergyman of holy orders celebrating divine service in a certain parish church of the Church of England.’ We are not called upon to say whether any proceeding could have been taken against the respondents for any other offence against the law,—whether the lamentable scene which took place in this church could give rise to any procedure under that part of sec. 2. of 23 & 24 Vict. cap. 32 which imposes certain penalties upon ‘any person who shall be guilty of riotous, violent, or indecent behaviour in any cathedral church, parish church, etc.’; but whether the respondents ought to have been convicted in respect of the subsequent words, ‘or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorised to preach therein, or any clergyman in holy orders ministering or celebrating any sacrament or any divine service, rite, or office, in any cathedral, church, or chapel, or in any churchyard or burial ground.’ That is a remarkable part of the section because it draws a distinction between a person ‘duly authorised to preach’ in the church, and ‘a clergyman in holy orders ministering or celebrating any sacrament or any divine service, rite, or office’ in any church. The express provision for the case of a preacher who is not strictly ministering or celebrating any sacrament or any divine service, rite, or office, shows that the Legislature, in dealing with the case of a clergyman in holy orders, meant the latter words to apply to something in the course of being done which in its character would only be done by a clergyman in holy orders. In this case the appellant is said to have been molested whilst ministering or celebrating a rite or office. He was collecting or attempting to collect the offertory. In passing from the pulpit or the reading desk to the communion-table the clergyman is on his way to do his duty. So, whilst returning, he is entitled to the protection of the Act whilst ministering or celebrating any rite or office, or making any movement towards, in, or after such celebration. But when he is engaged in doing a thing which is not within his duty and office as a clergyman it is otherwise. Was then the collection of alms the celebrating any divine service, rite, or office of the church? I apprehend not. The ministering of the sacrament of the Lord’s Supper necessarily requires the presence of a priest. So also the rite of baptism properly, though not necessarily, for in certain cases it may be performed by a layman or a woman. In these cases the clergyman would clearly be ministering or celebrating a sacrament or a rite within the meaning of the statute. Whether or not the collection of alms is a

rite or office celebrated by a clergyman in his sacerdotal character depends upon the rubric. If that imposed upon him, as part of the communion service, the collection of alms, possibly the words ‘ministering or celebrating any sacrament or any divine service, rite, or office,’ might be comprehensive enough to include it; for as I have before observed (in the course of the argument) the offering of alms for the honour of God during divine service is as much ‘celebrating divine service’ as is prayer or adoration. But the rubric imposes no such duty upon the celebrant. It excludes the notion that the priest is necessarily or even properly engaged in the collection of alms. The words are, ‘whilst these sentences,’ *i.e.*, the offertory sentences, ‘are in reading, the deacons, churchwardens, or other fit person appointed for that purpose, shall receive the alms for the poor, and other devotions of the people, in a decent basin to be provided by the parish for that purpose, and reverently bring it to the priest, who shall humbly present and place it upon the holy table.’ A deacon, therefore, if there be one, may properly collect the alms; if not, then they are to be collected by the churchwardens, who, though ecclesiastical officers, are regarded in law as mere laymen. The rubric goes on, ‘or other fit person appointed for the purpose.’ This clearly refers to a layman. The collection is to be made by a person of lower degree than a priest. It required a statute to enable a deacon to perform the ceremony of marriage. We are not called upon to go into the inquiry as to who is to appoint such ‘other fit person.’ We must assume that he may be appointed by the priest; and assuming that the person appointed for that purpose is not a clergyman, it is clear to my mind that the part of sec. 2 of the statute upon which this information is founded does not apply for the protection of the layman or the churchwarden. Whether or not it would protect the deacon may be a question of nicety. The rubric names a deacon as deacon, and with reference to a lower grade of ecclesiastical persons, which would not include a priest, according to Lord Coke’s commentary on the words of the stat. Westm. 2, c. 41, 2 Inst. 457, ‘Si abbates, priores, custodes hospitalium et aliarum domorum religiosarum,’ ‘seeing this Act beginneth with abbots, etc., and concludeth with other religious houses, bishops are not comprehended within this Act, for they are superior to abbots, etc., and these words (other religious houses) shall extend to houses inferior to these that were mentioned before.’ The rubric seems to assume that the proper place of the priest is at the communion table, whilst the deacon might collect the offertory. It is hardly necessary to say that in this context ‘other fit person’ would not include a priest as such. There is nothing improper in a priest, or even a patriarch, if there were such a dignitary in our church, making the collection. But if he does so, he is not whilst doing it ‘ministering or celebrating any sacrament or any divine service, rite, or office,’ but doing what may be done by a layman. The persons giving alms for pious purposes may be engaged in divine service, but not the clergyman who collects them.”—*Law Reports*, 7. C. P. 401.



## HISTORICAL APPENDIX (VII.).

**Notes on the Constitutional System of the Gallican Church,  
furnished at the request of the Commissioners, by the Very  
Rev. the Dean of St. Paul's.**

THE French or Gallican Church, from its spirit of independence, combined with the high value which it set on the unity of Western Christendom, from the power which it recognised in the Crown and in the law, from the learning of its representatives, and the method and system seen in its institutions and in the authoritative commentaries on them, is a remarkable example of a National Church, aiming at a constitutional position as a divinely founded religious society with its own usages and liberties, in harmony at once with the traditional primacy of the Pope, and with the claims of a singularly strong and jealous civil government. The interference of the Crown with matters not only ecclesiastical but strictly religious was continual, systematic, and often tyrannical, especially under Louis XIV. and Louis XV. But the distinct nature and the spiritual claims of the Church and its bishops were always recognised; the concurrent action of the two powers of Church and State was the constitutional principle, though the province of one or the other might be, at one time or another, unconstitutionally invaded.\*

## I.—FRENCH ECCLESIASTICAL LAW BEFORE THE REVOLUTION.

Fleury i. 39–42.  
Hericourt, i, ii, 93–95.

“On peut le nommer, l'ancien Droit Ecclésiastique,” as opposed to the later founded on the False Decretals. Fleury i. 3–14. Hericourt 4, 14, 109. Compare D'Aguesseau, quoted, Jervis i. 36, note.

Fleury i. 42–46, ii. 224, 5.  
Hericourt, 12, 96–100, 101.

Fleury i. 16–30.  
Hericourt, 12, 13.

Fleury i. 46–48.  
Hericourt, 13, 103, 110–112, v. p. 47.

Hericourt, p. 12, &c. xvi. 5–12.  
See list in Fleury ii. 280–337 from 585–1766. (Very incomplete.)

See examples in Fleury's list, above.  
Hericourt, c. xvi. 15–19.

Hericourt, p. 13, 96, § 14, 100, § 23, 101, § 30.

Hericourt p. 7, 9, 97, of the Decrees of Trent. “On cite ces decrets dans les “Parlements, non point comme des “autoritez qui ayent la force de loix par “elles mêmes mais comme des raisons “écrites,” *ib.* p. 99.

1. Holy Scripture; the ground of *Jus Divinum*.

2. Canons of the Early Church, as contained in the collection attributed to Dionysius Exiguus (6th century) with additions to the end of the 8th century.

3. Canons and Constitutions of later Councils, 1. Provincial, 2. National, 3. Ecumenical, *when legally approved in France*.

4. Papal decisions, *when conformable to the law of the realm, and legally approved in France*.

5. “Laudable Customs” of the French Church.

6. Royal Ordonnances and Edicts confirmed by law: either Organic Acts, as the Pragmatic Sanction of Bourges, the Concordat of 1516, the Four Articles of 1682: or special laws.

7. Rulings or orders (*arrêts*) of the Law Courts (*Parlements*) or of the Conseil d'État.

No ecclesiastical laws recognised as valid in France unless seen and approved by the Crown and the Parlement.

The later Canon Law (Gratian, the Decretals) not recognised as binding in France.

## \* BOOKS CONSULTED :

De Hericourt.—“Les Loix Ecclésiastiques de France dans leur ordre naturel, par M. Louis de Hericourt, Avocat au Parlement.” Paris, 1719.

[This, the first edition, gives a general account of the system as it was worked to the end of the reign of Louis XIV. The later editions are affected by the ecclesiastical policy of the Regency and of Louis XV., and the conflicts between the Crown and the Parlements.]

Fleury.—“Institution au Droit Ecclésiastique : par M. l'Abbé Fleury. Nouvelle édition, par M. Boucher d'Argis, Avocat et Parlement.” Paris, 1771.

Dupin.—“Manuel du Droit Public Ecclésiastique Français : par M. Dupin.” Paris, 1845. [Lists of works on French Ecclesiastical Law, and on the Proceedings of the Assemblies of the Clergy, in Fleury and Dupin.]

Jervis, Rev. W. Henley.—The Gallican Church; a history of the Church of France from the Concordat of Bologna, 1516, to the Revolution. 2 vols. 1872.



## II.—THE CROWN.

*Crown independent of all foreign powers.*

Arrêt of the Parlement of Paris 1417 (Charles VI.) in Hericourt c. xvii. 9. Compare language of 24 Henry VIII. c. 12.

“Le Roi notre Sire est *Empereur en son Royaume*, non tenant d'aucun que de Dieu, et non ressortissant à quelque personne ou Seigneur que ce soit : et comme Roi et Empereur peut faire Loix en son Royaume, contre lesquelles nul de son Royaume peut venir, *directè nec indirectè*, et mèmement par voye d'appel sur peine de Leze-Majesté.”

*The two great Gallican Maxims.*

Hericourt, c. vi. 7, c. xvii., 9. 10.

1. The Pope has no power, direct or indirect, over the King as to temporal matters or secular jurisdiction.

2. The Pope, in spiritual matters, is limited by the Canons and customs received and observed in the realm.

*Crown over all powers and persons in the realm.*

Hericourt, c. xvii., 12.

“All Frenchmen, ecclesiastic and secular, members of the Gallican Church.”

Hericourt, c. xii.

Kings of France have authority over the Church and ecclesiastical affairs :—

1. As chief magistrates of the State.

2. As Christian Kings responsible for welfare of the Church, and bound to defend and enforce its Canons.

3. As special protectors of the Gallican liberties, *i.e.*, rights of a *national church*.

Hence, general right of superintendence, sanction, and legislation.

Hericourt, c. xii., 2, 3.

As *Head of the State*, the King legislates for the Church in temporal matters, gives permission for Church councils, maintains peace, prevents encroachment on temporal power, grants privileges and coercive jurisdiction to the Church.

Hericourt, c. xii., 4, 5.

As *Defender of the Canons*, he watches over ecclesiastical discipline, represses heresy, makes regulations for Church order.

Hericourt, c. xii., 6.

Hericourt, c. xix., 2.

The *Crown has no power over questions of Faith*, but confirms by its ordinances the decisions of the Church, and makes them by its confirmation a law of the State as well as of the Church.

Hericourt, c. xii., 8.

Kings of France are bound by coronation oath to defend Gallican liberties, “which are nothing but the observance of ancient canons and immemorial usages of the realm of France.”

Hericourt, c. xii., 9, cf. xxiii., p. 187.

The Kings of France have confided part of their authority to the Courts (*Parlements*), which are to watch in the King's name over the temporal rights of the Crown, over the due observance of the Canons, and the liberties of the Gallican Church, and which receive appeals when the ecclesiastical tribunals have abused their power.

Hericourt was a priest of the Oratory and an *avocat* in the Parlement of Paris.

The Parlements consisted of both ecclesiastical and lay members. (Fleury ii. 214.)

Fleury, ii., 226, 227, note.

No Papal constitutions or briefs could be published in France without sanction of the King or the Parlement.

Hericourt, c. xiv., 16, 17, 21–23.

No ecclesiastical canons valid without sanction of the King or Parlement, which may modify such canons, &c.

Hericourt, c. xiv., 18.

All ecclesiastical acts, such as “mandements” of bishops, or letters or decisions of ecclesiastics, *e.g.* the Sorbonne, liable to suppression by the authority of the King with Parlement.

Hericourt, c. xiv., 19, 20.

Jervis, i., 166–171.

Persistent refusal to receive the decrees on discipline of the Council of Trent in France, in spite of the repeated remonstrances of the clergy.

## III.—JURISDICTION.

1. *Spiritual*, derived from their office as Bishops. Fleury ii., 1–3. 18–20. Hericourt, vi. p. 51.

Jurisdiction composed of—1. *Spiritual authority*\* given by J.C. to the Bishops of his Church, to teach, to administer the Sacraments, to judge error and vice, to admit or exclude in the Church, to do whatever purely spiritual acts are necessary to maintain the Faith for which the Bishops are responsible.†

This no human power can give or take away.

\* “La jurisdiction qui appartient à l'Eglise de droit divin ne consiste que dans le pouvoir d'enseigner les nations, de remettre les péchez, d'administrer aux Fidèles les Sacrements, et de punir par des peines purement spirituelles ceux qui violent les Loix ecclésiastiques.”—Hericourt, *Loix Ecclésiastiques*, i. 2, p. 16., c. xix., 1–3.

† “C'est au Collège Apostolique et au Corps des Evêques successeurs des Apôtres et premiers Pasteurs que J. C. a confié la Jurisdiction ecclésiastique.”

“L'Evêque est de droit commnn le seul Juge ordinaire de son Diocese.”—Hericourt, i. 6, 7, p. 19, xi. 1, xii., 6.



2. *Temporal*, derived absolutely from the Civil power.

Hericourt i. 3, 4. p. 18.

Fleury ii., p. 3, note and p. 16.

"By grant of secular princes the Church received the privilege, 1. Of a Contentious Tribunal, *i.e.* with Coercive power; 2. Right of judging personal cases of Clerks, both civil and criminal."

Hericourt, i. 3, p. 19, xii. 3.

Fleury ii. 4-17.

Hericourt, v. 10.

Fleury ii. 30-36.

Hericourt, c. ii., 1-18.

Hericourt ii., 19-40.

Fleury ii., 39-45.

"L'Evêque et l'Official étant censé n'être qu'un seul juge."

Hericourt ii., 28, 29.

*ib.* ii., 31-34.

"Le changement de juges est la principale source du déperissement de la juridiction ecclésiastique."

Hericourt, xxiii. 1.

Hericourt, c.v. 16. 18.

*ib.*, c.vii., xxiii. 3.

*ib.*, vi. 14-16.

Fleury, ii. 106-208.

Hericourt c. vi., 16.

Hericourt, vi. 15. (Papal condemnation of Jansenism (1660) and of Fenelon. Compare D'Aguesseau, quoted in Jervis, ii. 153.)

2. *Temporal Power*, given in, various degrees by the State to assist or enforce spiritual or ecclesiastical discipline. 1. Legal; 2. Coercive; 3. Derived absolutely from the Civil power.\*

Union of the two, properly "Ecclesiastical Jurisdiction."

I. This either—

1. *Voluntary* } In the hands of *Ordinary Judges*.  
2. *Contentious* }

*Voluntary*. Matters relating to Benefices, Preferments, Licenses and Dispensations, summary discipline.

*Contentious*. Matters going through process of law, disputes not settled by Bishop's personal authority.

1. Bishops exercised *Voluntary Jurisdiction* by their *Vicars General*, (*Grand Vicaires*).†

Their qualifications:—natural born subjects; priests; not connected with the Law Courts; they received a formal Commission, and were removable at pleasure.

2. Bishops exercised *Contentious Jurisdiction* by their *Officials*.

Qualifications: natural born subjects; priests; graduates in a French University in Canon Law and Theology.

The Official held a Court, regarded in law as that of the Bishop himself, with a "*promoter*" or prosecutor, generally a clerk. The Bishop could revoke his commission at pleasure, and his commission dropped with the life of the Bishop.‡

Fleury holds that originally the ordinary tribunals were: 1. The Bishop assisted by his clergy; 2. The provincial council of Bishops presided over by the Metropolitan. But as councils became infrequent, the Metropolitan, with his Official, took their place.

#### IV.—APPEALS.

1. *Simple*—to ecclesiastical authorities.

Ecclesiastical appeals strictly confined to their due order: first, to the *Ordinary Judge*, from the Bishop to the Metropolitan, from the Metropolitan to the Primate (if there is one§); then under certain limitations to the Pope, who must name *delegates* to judge on the spot.

Claim of the Pope to judge in the first instance, or *omisso medio*, always resisted:

"Autrement le Pape seroit l'Evêque Universel de l'Eglise, et les autres Evêques qui tiennent leur puissance immédiatement de J.C. ne pourroient estre regardez que comme des Vicaires."

History and origin of these appeals in Hericourt, c. xxv. going back to the Council of Francfort, 749, "le Canon 6 de ce concile porte que ceux qui auroient à se plaindre du jugement du Métropolitain, iroient à la cour du Roi avec des Lettres du Métropolitain, afin que le Roi s'instruise de l'affaire, et qu'il prononce sur la contestation. Ce Canon porte, *statutum est a Dno. Rege et Sancto Synodo*."

Claim of the French bishops to judge in the first instance; and when the Pope had pronounced, to review and approve his judgment.

\* The Maxim of Optatus (De Schism. Don. iii., 3) repeatedly quoted: "Non enim, Respublica est in Ecclesia, sed Ecclesia in Republica, id est in Imperio Romano."—Hericourt, pp. 13, 19; Jervis i. 269. quoting Richer.

† La Jurisdiction qui n'est point essentielle à l'Eglise, mais une concession des Princes, est le droit de connoître des affaires seculieres, et des délits commis par les cleres quand ces délits ne sont pas purement Ecclésiastiques. Cette Jurisdiction a été plus ou moins étendue, selon les temps, selon les lieux, et selon les Edits des Princes, qui peuvent mettre des bornes aux graces qu'ils ont accordées, quand ils voyent qu'elles donnent lieu à des inconvénients.—Hericourt, c. xix., p. 118.

‡ The Grand-Vicaires took the place of the Archdeacons, who had gradually come to claim, in the 12th century, an ordinary and inherent jurisdiction, apart from the Bishop. v. Hericourt, c. iii., 1-4. Fleury, ii., 30, 31.

The exercise of jurisdiction, both by the Grand Vicaires, and the Officials and their tribunals was regulated by various Royal edicts; especially those of 1667, 1670, and 1695, quoted in Hericourt. See preamble of Edict of 1695 in Hericourt, p. 88.

§ "La connoissance des affaires purement spirituelles appartient aux Juges Ecclésiastiques, eux seuls doivent les décider entre toutes sortes de personnes cleres et laïcs. Cette Jurisdiction leur appartient de droit divin, et les Juges laïcs qui tiennent leur autorité des Princes ne doivent pas entreprendre de décider les questions de cette nature."—Hericourt, c. xix., 1. quoting Ordinance of 1539, on these subjects: 1. Faith; 2. Sacraments; 3. Religious vows; 4. Divine worship; 5. Ecclesiastical discipline. *ib.* c. xix., 2, 3.

Competence and procedure of the Church Courts (*Officialités*), in matters civil and criminal, fully set forth in Hericourt, cc. xix.-xxiii.

§ "Tous ces privileges des délégués du Saint Siege viennent de la difficulté de recourir à Rome, particulièrement en France, ou nos rois ne permettent point que leurs sujets plaident hors du royaume."—Fleury, ii. 38.

There was only one real Primate (Lyons, with the Archbishops of Sens, Tours, and Paris (1622) under him.) Hericourt, p. 42.



Jervis, i. 406, 416, 469. (Various protests of bishops during Jansensist disputes.) ii. 179. Protest of Assembly of 1705 about the Bull *Vineam Domini*.

Claim of the King to give validity to the Pope's judgment.

Appeals may go on till there are *three* "sentences conformes."\*

2. "*Comme d'Abus*" ; to the civil power.†

Complaints of *abuse* of ecclesiastical jurisdiction, and encroachment on the temporal in the 14th and 15th centuries. Great discussion on the subject before the King between the Bishop of Autun and Pierre de Cugnères, who was held to have been the inventor of the *appel comme d'abus*. (1329). Limits of the two jurisdictions laid down in the ordonnance of Francis I., 1539. Hericourt, xix., p. 119 ; Fleury, ii., 11, 14, 212.

"Le Roi étant le défenseur de la Jurisdiction temporelle, le conservateur des saints Canons reçus dans le Royaume, et le défenseur des libertez de l'Eglise Gallicane, a confié sur ces sujets importants son autorité aux Parlemens, c'est pourquoi on s'adresse à eux par voye de l'appel comme d'abus, quand le Juge ecclésiastique a entrepris sur la Jurisdiction temporelle, quand il a jugé statué ou ordonné contre les saints Canons reçus dans l'Eglise de France, célébré un mariage contre les ordonnances, et abusé de la Jurisdiction qu'il exerce sous la protection du Roi."

No other appeals to be received by the Parlements.

Edit de 1695. Hericourt xxv. 30.

"Nos cours ne pourront connoître ni recevoir d'autres appellations des ordonnances et jugemens des Juges d'église, que celles qui seront qualifiées comme d'abus. Enjoignons à nos dites cours d'en examiner, le plus exactement qu'il leur sera possible, les moyens, avant de les recevoir, et procéder à leur jugement avec telle diligence et circonspection, que l'ordre et discipline ecclésiastique n'en puissent être alterez, ni retardez, et qu'au contraire elles ne servent qu'à les maintenir dans leur pureté, suivant les saints Décrets, et à conserver l'autorité légitime et nécessaire des Prélats et autres supérieurs Ecclésiastiques."

Distinction from other appeals to Parliament. Fleury, ii. 214, 215, note 3.

Effect of the appeal.

Hericourt, xxv. 38, from the Edict of 1695.

"Le Parlement en prononçant sur les appellations comme d'abus doit dire (1) *qu'il n'y a abus*, ou (2) *qu'il a été mal, nullement, abusivement procédé, statué, ordonné ou célébré*. Dans le premier cas, l'appellant doit être condamné en 75 livres d'amende. Dans le second cas, si la matière n'est point de la compétence du Juge Ecclésiastique, on renvoie par devant le Juge ordinaire seculier :— mais si l'affaire doit être jugée par l'Official, le Parlement renvoie à l'Evêque pour nommer un autre Official, que celui qui avait rendu la sentence qui a été déclarée abusive, ou au Supérieur Ecclésiastique, si le jugement ou l'ordonnance a été rendue par l'Evêque."

Hericourt, xxv. 33, 36, 37, 39–52.

*Appels comme d'Abus* may be both in civil and in criminal matters, and in matters of Divine service and Ecclesiastical discipline.

*Appels comme d'Abus* may be either to the Parliament, or to the Conseil du Roi.

*Appels comme d'Abus* became frequent after the Concordat of Francis I. (1516).

Fleury ii. 213.

"Dans les commencements, l'appel était toujours qualifié comme *d'abus notoire* ; et on convient qu'il le doit être ; que cette appellation est un *remède extraordinaire*, qui ne doit être employé, qu'en de grandes occasions, où le public est intéressé : c'est pourquoi le procureur général est toujours partie principale. Mais dans la pratique, ces règles ne sont pas exactement observées, on appelle comme d'abus fréquemment et en matières légères, nonobstant les plaintes du clergé et les ordonnances des rois."‡

\* Fleury, ii, 208, 210.

† Hericourt, xxv. 2, 3. The standard work on the subject is Fevret, *Traité d l'Abus*, 1653 and 1736.

‡ En France, les juges royaux et les parlemens ont été bien plus avant : en matière criminelle ils ont introduit la jurisdiction du *délit commun* et du *cas privilégié* ; en matière civile ils ont rappelé à leur tribunal toutes les matières profanes, et même une partie des ecclésiastiques, par la distinction du possessoire et du pétitoire. Les parlemens ont admis l'appellation comme d'abus, toutes les fois que l'on prétend que le juge d'Eglise a excédé son pouvoir, procédé contres les Canons, ou contre les loix du royaume. Ces bornes de la jurisdiction ecclésiastique ont été confirmées par l'ordonnance de 1539, et encore plus par l'usage qui a suivi ; et ce sont à présent les ecclésiastiques qui se plaignent d'être presque dépourvues de toute leur jurisdiction."

Fleury, ii. 14, 15, see p. 44.



For modern usage, see list of cases from 1820 to 1845, in Dupin, *Manuel du Droit Ecclesiastique Francais*, 1845, p. 255-258. They include cases not only of Church property, but of official expression of opinion, of refusal of the sacraments, and of exercise of Ecclesiastical discipline.

#### V.—CONSTITUTIONAL PRECEDENTS AND ILLUSTRATIONS.

Jervis, i., 32-44.  
Hericourt, c. vi., p. 49.

Jervis, i., 47, 48.

Jervis, i., 23, ii., 40.  
Fleury, i., 33.  
Dupin, p. 243.

Jervis, i., 58-71.

Fleury, i., 32, 33.  
Jervis, i., 80-99.

Hericourt, xvi., p. 107.

Jervis, i., 97-101.

Louis XI. abolished the *Pragmatic Sanction*. The Law Courts resisted and pronounced the abolition null and void. Louis XII. re enacted it, and quarrelled with the Pope.

Jervis, i., 105, 106.  
Hericourt, p. 11, 44.

Jervis, i., 107.

Jervis, i., 106-110.  
Hericourt, p. 11, 12.

Hericourt, p. 110-112.  
Jervis, i., 196.  
Dupin, Manuel, xii.

Jervis, i., 196.  
Jervis, i., 266-274, 278-283.

Jervis, i., 282-3.

Dupin, Manuel, xiv.—xxvii.  
Jervis ii., 44.

Jervis, 46-51. Edict about the Declaration, March 1682. Fleury, ii. 302.

1. Ninth and tenth centuries : Hincmar of Reims and the Popes ; assertion on behalf of French Church of—1. *Authority of Canons against Papal decrees*. 2. *Order of Appeals to the Pope* ; all canonical steps to be observed. 3. *Appeals to be judged in France*. 4. *By Legates authorised by the Crown and the law*.

2. "*Pragmatic Sanction*" of S. Louis (1268) guarding against the Pope, *rights of patrons, freedom of Cathedral elections, authority of the Canons* ; *forbidding simony, and taxes imposed by Rome*.

3. Quarrel between Philip the Fair and Boniface VIII. ; unlimited assertion of Papal supremacy (Bull, *Unam sanctam*) resisted by King and the estates of the realm. Counter assertion of Royal and National independence. (1296-1303.)

4. *Withdrawal of obedience* "selon le droit ordinaire," by the King and Church of France at times during the Great Schism ; Church governed by its own hierarchy, with no reference to the Pope. [1378-1449.] King summoning National Councils, and taking order with them for government of the Church ; recognising and taking part in General Councils, Constance and Basle.

5. "*Pragmatic Sanction*" (Bourges 1438) of Charles VII. Edict declaring rights of a *National Council* in recognising a Pope and a General Council.

*Elections to Bishoprics to be free and canonical, i.e., not nominations by the Crown*.

Claim to adapt Canons of Basle to the wants and customs of France.

6. *Concordat of Francis I. and Leo X.* Bologna, 1516. This set aside the Pragmatic Sanction as the law of the French Church.

It transferred, by agreement with the Pope, nomination to Bishoprics from the Chapters to the Crown, reserving institution to the Pope.

Ecclesiastical causes to be decided by the ordinary tribunals within the realm. Appeals in *causæ majores* to the Pope ; but heard and judged by his delegates within the realm.

All mention dropped of Constance, Basle, or Bourges.

*Pragmatic Sanction of Bourges* annulled by the Pope in the Bull "*Pastor Æternus*" which revived the "*Unam sanctam*" of Boniface VIII.

*Concordat* resisted, 1, by the *Parlement* which long refused to ratify it, till compelled by the King's authority in 1527.

2. Protested against by the clergy and the University of Paris without effect till 1588, but finally submitted to.

7. "*Liberties of the Gallican Church*" :

1. Pope and Bishops have no power, direct or indirect, over temporal concerns of the Crown, or its secular jurisdiction.

2. Spiritual power of the Pope limited in France by the Canons and the custom of the realm.

Controversies between the Parlements and the clergy :

*Legal view*, Pithou, 1593 ; Richer, 1611 ; Articles of the Tiers Etat in 1614.

*Ecclesiastical view*, De Marca, Ellies-Dupin ; Articles of the Clergy, 1614-5.

8. *Declaration of the Clergy in 1682. The Four Gallican Articles*.

Question between King and Pope about the *Regale* (i.e. King's rights over vacant sees).

King and French clergy come to an arrangement, which the Pope refuses to sanction. Royal Edict about the Regale, Jan. 1682. Consent of the clergy, Feb. 3, 1682.

Then the King requires the Assembly to draw up statement of the Gallican doctrine of the independence of the Crown in temporal matters, and the limitation of the Pope's spiritual power by the canons



Edict, in Bossuet's *Defensio* i., p. liii. Hericourt, vi. 7. note.

Jervis, 55.

*ib.* ii. 74. Hericourt, p. 187.

*ib.* ii. 76.

*ib.* ii. 77, *see* ii. 424-5.

Arret of Conseil d'Etat, May 1766, in Dupin, Manuel, p. 114. Decree of Feb. 1810; *ib.* p. 119.

Jervis i., 412-415.

*ib.* i., 417-419.

*ib.* i., 420-427.

*ib.* i., 445.

*ib.* i., 446.

*ib.* i., 450.

*ib.* i., 454, 455-466.

*ib.* i., 456. "As often as the public relations between the Courts of France and Rome chanced to be disturbed, his most Christian Majesty lost no time in re-asserting these immemorial principles," &c.

*ib.* i., 461-469.

*ib.* i., 472.

*ib.* ii., 138.

*ib.* ii., 148.

*ib.* ii., 153, 154.

*ib.* ii., 156-7.

*ib.* ii., 160.

*ib.* ii., 162.

*ib.* ii., 166, 168.

*ib.* ii., 171.

*ib.* ii., 177-181.

*ib.* ii., 183-200.

*ib.* ii., 209.

*ib.* ii., 210-215.

King orders the Declaration to be registered in Parlement, and subscribed in all Universities. March 1682.

Pope refuses institution to bishops.

King threatens to fall back on the right of Metropolitans to institute, and appeals to a future General Council, 1688.

Death of Pope Innocent XI., Aug. 1689.

King threatens to restore Pragmatic Sanction. Compromise with Innocent XII. Sept. 1693.

King's claim allowed.

Declaration no longer *to be enforced as obligatory*.

Clergy apologize to the Pope for the Declaration but maintain its doctrine.

Kings still maintain its validity *as a law of the realm*, binding on all Frenchmen.

#### 9. *Affair of the signature to the Formulary.*

Pope Innocent X. (1653) condemned the "Five Propositions" of Jansensus as heretical, and his condemnation universally received by French bishops and Sorbonne: legalised by Royal Edict.

Jansenists accepted condemnation, but denied that *as a fact the propositions were in Jansenius*.

Bishops, at Mazarin's instance, attempt to enforce *subscription* to the Pope's Bull. Resistance of the Jansenists.

Pope Alexander VII. condemns their doctrine.

The Assembly of 1656 draws up a "*Formulary of complete acceptance of the Pope's constitutions, both as to doctrine and fact.*"

At request of the Assembly, Royal message to Parlement, ordering registration of Pope's Bull, and *enforcing signature of Formulary on all Ecclesiastics*.

Assembly of 1661, at instance of King, again makes signature obligatory, and its order confirmed by Council of State.

Great resistance. Vicars General of Paris. Enforcing signature on Port-royal. The four Bishops, Pavillon of Alet, &c. protest.

[Meanwhile, King and Pope at variance on other matters. Six *Gallican* Articles of Sorbonne, 1663, enforced by King and Parlement.]

1663. Bishops ask for fresh measures to enforce "Formulary."

King orders signature universally, April 1664: confirms Pope's Bull on the Formulary, Feb. 1665.

1667. Protest of some French bishops; suppressed by Council of State.

Peace of Clement IX. confirmed by Council of State, Oct. 1668.

#### 10. *Affair of Quietism.*

Interference of Louis XIV., 1697-9, with the judicial proceedings at Rome against Fenelon for his alleged mysticism; grounded on the King's duty to preserve his subjects from *religious discord*. King's letter to the Pope urging him to condemn Fenelon's book.

Pope's brief received, *after examination and criticism by the provincial Assemblies of the clergy*.

Pope's brief registered by King's order in Parliament, August, 1699. "*Salvâ priscorum canonum auctoritate.*"

#### 11. *Revival of Jansenist dispute, 1700.*

Bossuet's advice to Louis *to authorise the assembly* to condemn at once Jansenist evasions and Jesuit laxity.

*The 127 Propositions* censured.

Question of "*Honest subscription*" revived in the Sorbonne. Jansenist doctors deprived and exiled.

Anti-Jansenist Bull (*Vineam Domini*) arranged in consent with the King. Examined by Assembly, and *accepted with qualifications*.

Quesnel's "New Testament" condemned by Pope.

1711. King demands a Bull condemning it.

1713. Bull "*Unigenitus*" condemning the 101 Propositions. of Quesnel's New Testament.



Jervis ii., 216, 217.

*ib.* ii., 220.

*ib.* ii., 227.

*ib.* ii., 236.

*ib.* ii., 239-241.

*ib.* ii., 244-5.

*ib.* ii., 271-2.

*ib.* ii., 273.

*ib.* ii., 273-4.

*ib.* ii., 275-278.

*ib.* ii. 392.

*ib.* 396-400.

*ib.* 400-402.

*ib.* 403-412.

In Dupin, Manuel, p. 247-214.  
Jervis ii., 413.

Dupin, Manuel, p. 215-234.  
Jervis ii., 415.

King summons a certain number of bishops to report on it.

Division in Assembly about receiving it, "the majority subscribing it on general principle of obedience to the King." Protest to the King of the minority.

Registered in Parliament. Opposition by one of the clerical councillors, "who attacked the word 'we enjoin,' as applied to the Bishops in the letters patent." This, an infraction of the rights of the Episcopate, who could not recognise secular authority in matters of which, by their office, they were exclusive judges. Violent opposition in the Sorbonne.

Louis prepared to force the Bull on all dissentients by his own authority—dies (Sept. 1715).

#### 12. *Appeal of the Four Bishops.*

1717. Appeal of the Four Bishops to a General Council against the Bull *Unigenitus*, joined in by the Theological Faculty. Bishops banished from Paris. Sorbonne forbidden to debate.

Archbishop of Paris excommunicates "appellants."

Parlements annul his sentence, and other sentences.

Regent enjoins absolute silence.

Dubois' "*accommodement de 1720.*" Council of State decrees acceptance of the Bull as Law of the State, and Parlement refuses to register; great quarrel; at last Parlement yields and registers.

#### 13. *The King and the Parlements.*

1730. Louis XV. requires by edict, 1. Subscription to the Formulary; 2. Submission to Bull *Unigenitus* as a Law of Church and State; forces Parlement to register by "lit de justice."

Parlement upholding, against the King, the supremacy of the Temporal power, represented by the Courts and Law.

New attitude of the Parlement; it protects, against the Bishop, three curés of Orleans who refuse to sign the Formulary.

Quarrel between Archbishop and Parlement, evoked to the Council of State; strike of the French Bar. Ecclesiastical questions passing into political ones: Antecedents of the Revolution.

#### 14. *The Revolution.*

Confiscation of Ecclesiastical property. Nov. 1789.

"*Constitution Civile*" of the clergy: voted by the Assembly, 3rd July 1790.

New arrangement of dioceses.

Prohibition of any recognition of a foreign see.

Popular election of clergy; the only qualification for *suffrage*, having attended mass before election.

Confirmation of Bishops by Metropolitan, not by the Pope.

Oath to the constitution obligatory.

Break-up of the French clergy; those who take, and those who refuse the oath, "*insermentés.*"

Concordat of 1801 with the Pope.

Re-establishment of the Church.

Pope accepting new dioceses and the confiscation of Church property.

Organic articles, imposed by government without sanction of the Pope.

Restriction on communication with Rome.

Restriction on all ecclesiastical legislation.

*Appels comme d'abus* to the Council of State.

Restrictions on ordinations.

Recognition of civil marriage.



## HISTORICAL APPENDIX (VIII.).

## Replies to Questions as to the Tenure of Temporalities by Ecclesiastics in France under the Concordat. By M. Treitt, Legal Adviser to Her Majesty's Embassy in Paris.

NOTE.—These replies were obtained through the Foreign Office.

## (I.)

L'article 12 du Concordat a mis à la disposition des Evêques toutes les Eglises métropolitaines, cathédrales paroissiales et autres, non aliénées, nécessaires au Culte.

L'article 14 dit que le Gouvernement assurera un traitement convenable aux Evêques et aux Curés.

On demande comment les Evêques exercent les droits que la mise à leur disposition de ces édifices leur a conférés ? Chaque Evêque les exerce-t-il seul sans appel au autre recours ?

Un Curé une fois pourvu d'une église et d'une presbytère peut-il en être privé arbitrairement par l'Evêque ou au moyen d'une procédure pour des faits spécifiés ?

(1.) C'est un point de doctrine et de jurisprudence incontesté, que la mise à la disposition des Evêques des églises, ne leur a conféré aucun titre de propriété. Il est de principe que les Evêques n'ont absolument que les droits d'un usufruitier sur les édifices qui ont été affectés au culte catholique, en vertu de la loi du 18 Germinal an 10 (8 Avril 1802), loi généralement appelée le Concordat.

Le Code civil a défini les droits et les obligations de l'usufruitier ; et les évêques y sont soumis ; d'après les règles de l'usufruit, le fond reste intact ; aussi l'Evêque ne pourrait changer la destination d'une église sans le consentement de l'Etat, qui en est le nu-propriétaire.

Quand il s'agit des intérêts temporels du diocèse, l'Evêque est obligé de consulter le chapitre métropolitain, autrement dit, le Conseil des chanoines de la Cathédrale. Ce conseil administre les biens de l'Evêché et donne son avis sur toutes les matières concernant l'administration civile du diocèse ; ainsi l'Evêque ne peut agir *seul*. Il y a un chapitre dans tous l'évêchés, l'institution des chanoines et des Chapitres a été prévue par le Concordat, mais sans obligation de les doter (Article 11). Si l'Evêque ou le Chapitre prenait une décision contraire à la loi civile ou aux intérêts de l'Etat, le Gouvernement aurait le droit de déférer cette décision au Conseil d'Etat et d'en demander l'annulation.

Cette procédure s'appelle la procédure d'appel pour cause d'abus.

(2.) Une église et un presbytère une fois affectés à un curé, ils ne peuvent lui être retirés, et le Curé lui-même ne pourrait être déplacé et envoyé dans une autre cure ; en France, les Curés ne sont pas à la discrétion des évêques ; ils sont inamovibles.

L'évêque peut bien leur retirer les capacités ecclésiastiques, autrement dit, les interdire et leur défendre de célébrer le culte, mais il ne peut les priver du traitement que l'Etat leur alloue.

(3.) En France, selon les termes du Concordat on appelle curés les prêtres qui sont à la tête de l'Eglise d'un chef lieu de canton, ou *église cantonnale* ; tous les autres prêtres pourvus d'une église sont nommés desservants ; et si on les appelle curés, c'est simplement par courtoisie.

Les desservants sont soumis à l'arbitraire de l'Evêque ; il les nomme et les déplace *ad nutum* ; seulement l'évêque doit aviser le Gouvernement de chaque mutation.

Dans diverses localités, les curés cantonnaux sont indifféremment dénommés archiprêtres, doyens ou recteurs.

Les vicaires sont de simples prêtres assesseurs des curés et des desservants ; les vicaires ne reçoivent pas de traitement de l'Etat ; mais ils sont salariés, soit par les fabriques (*Vestry Boards*) soit par le revenu du casuel, soit par des allocations que leur votent annuellement les conseils municipaux des communes, aux églises desquelles ils sont attachés.

Auprès de chaque église, il y a autant de vicaires que les nécessités du Culte et de la population peuvent l'exiger.

Quand dans une même paroisse il y a deux ou plusieurs églises ou les exercices du Culte sont nécessaires, le

desservant peut célébrer le Culte dans deux églises. Cela s'appelle le binage.

Si le desservant a un ou plusieurs vicaires (*curates*) il peut les déléguer pour les autres églises de sa paroisse.

(4.) J'ai déjà dit que les desservants et les vicaires étaient à la discrétion de l'Evêque, tandis que les curés sont inamovibles.

Cette subordination du bas clergé à l'arbitraire de l'Evêque a été souvent l'objet de vives discussions dans les Chambres françaises.

Sous les règnes des Bourbons, de Louis Philippe et de Napoléon III., cette dépendance des desservants a été une arme d'opposition contre le Gouvernement que l'on accusait de ne rien faire pour l'émancipation du Clergé.

Aujourd'hui, les idées sont bien modifiées ; la même école qui autrefois, pour rallier le bas clergé à ses opinions politiques le défendait contre l'absolutisme des évêques, veut le subordonner complètement au pouvoir civil et le réduire à une condition inférieure à celle du moindre fonctionnaire public.

En effet, d'après un avis très récent du Conseil d'Etat, le Gouvernement peut s'attribuer le droit de priver les évêques et les curés et desservants de leur traitement dans le cas où leur attitude ne serait pas correcte vis-à-vis de l'Etat ; si, par exemple, les évêques violaient les défenses prévues par l'Article 6 de l'annexe au Concordat, appelée articles organiques, ou s'ils commettaient des actes hostiles à la forme du gouvernement. Tous les actes de ce genre peuvent être déferés au Conseil d'Etat, et le Conseil d'Etat a le droit de les blâmer et de les annuler. Mais récemment le Gouvernement, en vertu de sa seule et propre volonté, a mis en pratique le droit de retenir les appointements des Membres du Clergé dont il est mécontent.

(5.) Cette prétention (contre laquelle du reste la papauté préteste) est contraire aux principes généraux du droit et à l'esprit comme à la lettre du Concordat.

Le Concordat, un effet, est un traité diplomatique, un contrat passé entre le Pape et l'Etat français. Personne n'a jamais contesté ce caractère au Concordat.

Le traitement des membres du clergé et l'entretien du culte est une des conditions du contrat ; les fonds affectés au culte sont considérés comme la restitution des biens ecclésiastiques confisqués pendant la révolution.

Tel est l'esprit du Concordat lequel est réellement un contrat bilatéral ; une seule des parties contractantes n'a pas le droit de le rompre.

A un autre point de vue, quand il s'agit de condamner quelqu'un à une amende (celle-ci ne serait-elle que de cinq francs) il faut la réunion d'un tribunal, il faut un jugement accompagné de toutes les formalités exigées par la Loi ; le Gouvernement de sa seule et propre autorité, ne peut donc avoir le droit de retenir le traitement des membres du clergé et leur infliger une amende considérable ? Cela n'est pas admissible.

De pareils procédés entretiennent en ce moment, en France, une vive agitation religieuse ; car, ces procédés tendent à l'oppression.



## (II.)

Les traitements ecclésiastiques sont-ils payés directement aux cures et aux évêques, ou bien faut-il un certificat de l'Evêque pour que le paiement puisse se faire ?

(6.) Le traitement est acquis aux membres du clergé du jour où ils ont pris possession de leurs fonctions.

Pour toucher ce traitement, il n'est pas nécessaire que l'Evêque ou une autorité ecclésiastique quelconque délivre un certificat.

Le mandat de paiement est dressé à la mairie de la

commune où résident l'Evêque, le Curé et les desservants. Le mandat est transmis au Préfet du département. Après avoir été revêtu du visa du Préfet, le mandat est renvoyé aux membres du Clergé. Ceux-ci le touchent directement chez le Percepteur (ou collecteur d'impôts), le plus voisin.

## (III.)

Quelles sont les ressources ou la dotation des églises ? Qui en a la charge, le *trust* ? Quelle est la nature de la dotation ? Y a-t-il un recours pour les bénéficiaires devant les tribunaux civils ?

Toutes autres informations sur ce sujet seront bien accueillies.

(7.) Avant la Révolution de 1789, le Clergé était propriétaire de biens considérables, dont les origines étaient multiples. Ces biens étaient administrés par un agent-général du clergé.

En 1789, l'agent-général du clergé était le fameux diplomate, Talleyrand, évêque d'Autun, qui était également membre de l'Assemblée Constituante.

C'est Talleyrand qui en Octobre 1789, fit la motion de mettre les biens du clergé à la disposition de la nation, à la condition que l'Etat pourvoirait aux frais du culte et à l'entretien de ses ministres.

Depuis cette époque, l'Eglise fut victime d'une série de spoliations ; la confiscation fut étendue à tous les biens d'église. Ces biens étaient la garantie du papier-monnaie ; bref, en 1801, il n'y avait plus en France de culte organisé, ni clergé ni fonds affectés à l'entretien du culte ; la Révolution avait fait table rase de l'ancien régime.

(8.) Le concordat marque une ère nouvelle.

La véritable dotation du clergé est dans le budget annuellement voté par les Chambres, en vertu de l'article 14 du Concordat, qui a mis les frais du culte et le salaire de ses ministres à la charge de l'Etat.

Mais depuis 1801, les différents gouvernements ont étendu les allocations budgétaires bien au-delà des prévisions du Concordat.

Ainsi sont payés par le Budget des Cultes, les traitements des Cardinaux ; des vicaires généraux, des chanoines titulaires des Cathédrales ; des chanoines de St. Denys ; des Chapelains de Sainte Geneviève et des aumôniers des dernières prières pour les trois cimetières de Paris ; les frais de bulle et d'établissement des cardinaux, archevêques et évêques ; les indemnités pour les visites pastorales des prélats ; le binage ou le double service des paroisses ; les pensions ecclésiastiques ; les secours personnels aux prêtres et aux anciennes religieuses ; les bourses dans les séminaires (*Scholarships*) ; les subventions annuelles à diverses communautés religieuses ; les dépenses intérieures des édifices diocésains y compris le mobilier des évêchés ; les travaux ordinaires d'entretien, de construction et de grosses réparations des édifices diocésains ; les secours aux communes et aux fabriques pour contribuer à l'acquisition, aux réparations et aux constructions des églises et des presbytères des paroisses.

(9.) Telles sont les dépenses auxquelles le budget pourvoit chaque année ; pour ces fonds là, il n'y a pas besoin d'un *trust* ou de *trustees*, puisque le Ministre des Cultes en fait la répartition à peu près arbitrairement.

Mais depuis plusieurs années, les Chambres ont retranché du budget des cultes plusieurs des dépenses que je viens d'énumérer, telles que celles affectées aux chanoines de St. Denys, aux chapelains de St. Geneviève, aux aumôniers des dernières prières et encore à d'autres institutions ; en ce moment on agit la suppression des bourses des séminaires, ce qui rendrait fort difficile le recrutement du clergé. En un mot, il règne dans les régions gouvernementales et surtout dans la Chambre des Députés une vive hostilité contre le clergé ; on y pousse à la suppression du budget des cultes et à la séparation de l'Eglise et de l'Etat.

(10.) Mais si le clergé ne possède plus de biens, les institutions ecclésiastiques en possèdent et en jouissent comme propriétaires. Les évêques, les curés, les fabriques, sont des personnes juridiques ayant qualité pour acheter, vendre et acquérir par dons et legs.

Les dons et legs sont toujours soumis à l'autorisation du Gouvernement qui peut en permettre ou refuser l'acceptation ; ou les réduire.

NOTE.—Un journal du matin publie les renseignements suivants sur la note diplomatique que le pape aurait adressée au gouvernement français, au sujet du Concordat :

Les revenus de ces biens contribuent à améliorer, en partie, la position pécuniaire des membres du Clergé ; les fabriques leur allouent souvent un supplément de traitement ; souvent aussi les conseils municipaux des communes leur votent une subvention annuelle ; il y a des conseils généraux de départements qui prélèvent sur les fonds départementaux certaines sommes au profit des évêques et des archevêques ; mais toutes ces allocations sont précaires ; elles peuvent être supprimées chaque année par ceux qui les votent ; dans ces derniers temps, il y a eu d'assez nombreux cas de pareilles suppressions ; vu que, d'après le Concordat, la seule dépense obligatoire pour les communes est de fournir au Curé et au desservant un logement convenable et pour les départements de pourvoir les Evêques d'une habitation appropriée à la situation élevée des prélats.

(11.) Le clergé n'est donc pas riche en France. Le salaire des membres du clergé a beaucoup varié depuis le Concordat. Pour les évêques, il a flotté entre 10,000 et 15,000 francs ; pour les cures et les desservants le salaire a flotté entre 500 et 1,000 francs ; il est aujourd'hui de 800 francs pour les desservants et de 1,200 francs pour les curés. C'est là, l'allocation du Gouvernement. Mais ils ont, en outre, le casuel ou les oblations, dont les tarifs doivent être soumis à l'Etat.

Dans les grandes agglomérations de population, le casuel constitue un revenu considérable, à ce point que bien des curés refusent de devenir évêques, vu la position bien inférieure de ces derniers sous le rapport du traitement.

Le casuel se partage en certaines proportions, entre les curés et les desservants et la fabrique.

Il y a environ, en France, 38,000 communes ou paroisses ; dans les huit dixièmes de ces paroisses le casuel forme un très mince revenu et l'on peut dire sans exagération que dans les petites localités et dans les localités pauvres, le clergé est journellement en lutte avec les besoins ordinaires de la vie.

(12.) Les assistants des cures et desservants, les vicaires sont généralement rétribués sur le revenu de l'église quand il y a un revenu ; quand il n'y a pas de revenu, ils n'ont que leur part du casuel, mais souvent les conseils municipaux leur votent une subvention annuelle ; les fabriques contribuent également à leur entretien. Nous avons vu plus haut que l'Etat accordait un traitement pour le binage, quand il y a à desservir deux églises dans la même paroisse ; les vicaires n'ont pas droit au logement comme les curés et les desservants. Généralement ils vivent au presbytère en payant une pension au curé.

(13.) Les prêtres, comme tous les français sont soumis aux lois civiles et criminelles de droit commun ; mais comme prêtres, ils sont placés sous la juridiction de l'Evêque. Celui-ci peut leur infliger les peines canoniques de différents degrés, telles que la pénitence, la censure et l'interdiction. A cet égard, le prêtre ne peut exercer aucun recours contre l'évêque devant les tribunaux civils ; il ne peut que déférer la décision de l'Evêque à l'Archevêque et au besoin au pape. Aucun juge laïque n'a compétence en pareil cas.

(14.) La matière des biens d'église et de la situation du Clergé est bien étendue ; elle a donné lieu à des centaines de décisions des autorités civiles et religieuses et politiques ; le nombre des commentaires, des livres et des controverses que cette matière a engendrés est incalculable ; j'ai cherché à répondre aux questions posées et à donner des informations en rapport avec ces questions.

Si elles sont insuffisantes, je suis prêt à les compléter.

Paris ce 6 Juin, 1883.

TREIT.



Nous savons de source certaine que S.S. le pape Léon XIII. a adressé, la semaine dernière, à M. le Président de la République une lettre de remontrances au sujet des vexations dont souffre le clergé français.

Sa Sainteté a déclaré, dans cette lettre :

- 1°. Que si le gouvernement continuait à se faire du Concordat un instrument de guerre contre l'Eglise ;
- 2°. Que si le gouvernement persistait à suspendre les traitements concordataires des évêques ;
- 3°. Que si le gouvernement ne cessait de faire condamner comme d'abus, par un conseil d'Etat notoirement athée, les évêques coupables d'avoir publié les bulles pontificales ;

Elle se verrait dans l'obligation de dénoncer le Concordat, devenue lettre morte. Le pape ajoute qu'il ne songe aucunement à intervenir dans les affaires intérieures de la France ; qu'il défend seulement les droits de l'Eglise. Pour donner la mesure de sa haute impartialité dans les querelles politiques, il invite, en terminant, le gouvernement français à lui signaler tous les évêques qui, dans leurs actes ou dans leurs paroles, outrepasseraient leurs droits de citoyens.

Sa Sainteté se fait fort de réprimer de pareils écarts.

Cette lettre, dont l'existence est certaine, a eu pour premier effet la démarche conciliante de M. Jules Ferry auprès de la commission du Concordat.

## HISTORICAL APPENDIX (IX.).

### Introduction with Appendix to the Return of all Appeals in Causes of Doctrine or Discipline made to the High Court of Delegates.

*Note.*—The Return to which the following Introduction and Appendix were prefixed by Mr. Rothery, Her Majesty's Registrar, was moved for by Mr. Hubbard in 1865, and was made, and ordered by the House of Commons to be printed [No. 199], in 1868. The points of interest to be gathered from the Return being indicated in the Introduction and Appendix it has not been considered necessary to print the former. [See Minutes of Proceedings of the 61st Meeting ; ante, p. 15.]

#### I.—JURISDICTION OF THE COURT.

THE High Court of Delegates, which had probably existed from a very early period as a secular Court of Appeal, first acquired jurisdiction in ecclesiastical matters by the Act 25 Hen. 8, c. 19 (1533), intituled "The Submission of the Clergy and Restraint of Appeals." By s. 3 of that Act the practice of appealing to the Bishop or See of Rome was abolished, and in lieu thereof it was provided (in s. 4), that "for lack of justice at or in any the Courts of the Archbishops of this realm, or in any the King's dominions, it shall be lawful to the parties grieved to appeal to the King's Majesty, in the King's Court of Chancery, and that upon every such appeal a commission shall be directed under the Great Seal, to such persons as shall be named by the King's Highness, his heirs or successors, like as in case of appeal from the Admiral's Court,\* to hear and definitively determine such appeals, and the causes concerning the same." It was further provided by s. 6, "That all manner of provocations and appeals hereafter to be had, made, or taken from the jurisdiction of any abbots, priors, or other heads and governors of monasteries, abbeys, priories, and other houses and places exempt, in such cases as they were wont or might afore the making of this Act, by reason of grants or liberties of such places exempt, to have or make immediately any appeal or provocation to the Bishop of Rome, otherwise called Pope, or to the See of Rome, that in all these cases every person and persons, having cause of appeal or provocation, shall and may take and make their appeals and provocations immediately to the King's Majesty of this realm, into the Court of Chancery, in like manner and form as they used afore to do to the See of Rome ; (2) which appeals and provocations so made shall be definitively determined by authority of the King's Commission, in such manner and form as in this Act is above-mentioned ; (3) so that no archbishop or bishop of this realm shall intermit or meddle with any such appeals, otherwise or in any other manner than they might have done afore the making of this Act ; anything in this Act to the contrary thereof notwithstanding."

By this enactment, then, the High Court of Delegates became the Court of Final Appeal from all the ordinary ecclesiastical tribunals in England and Wales, and so continued to be until its powers were transferred to the Judicial Committee of the Privy Council by the Acts of 1832 and 1833 (the 2 & 3 Will. 4, c. 92, and the 3 & 4 Will. 4, c. 41). It had also, until the year 1788, a con-

current jurisdiction with the High Court of Delegates of Ireland\* in appeals of all kinds from the Ecclesiastical Courts of that country. The only Ecclesiastical Court not within the appellate jurisdiction of the Delegates seems to have been the Court of High Commission, which, during the period of its existence from 1559 to 1640, and from 1686 to 1688, derived its authority, like the High Court of Delegates, from a special Royal Commission, and would, therefore, naturally be co-ordinate with, not subordinate to, it.†

The Ecclesiastical Courts from which an appeal lay directly to the Delegates, or more properly to the King in Chancery, whence a Commission of Delegates was issued for the trial of each appeal as it arose, were first, the Courts of the several Archbishops in England and in Ireland ; and secondly, the Peculiar Courts, such as that of the Dean and Chapter of Westminster, and many others in various parts of the country, which were exempt from archiepiscopal jurisdiction. Among these, perhaps, should be included as partaking in some degree of an ecclesiastical character, the Court of the House of Convocation of Oxford University, from the Delegates of which there are on record several appeals to the High Court of Delegates. No instance has been found in the records of any similar appeal from Cambridge, but probably the course of appeal was the same from that University also.

Each Archbishop, in England at least, and probably in Ireland also, had several distinct Courts, from any one of which an appeal lay to the Delegates. In the province of Canterbury, a large proportion of the appeals were supplied by the Prerogative Court, the jurisdiction of which was original only, not appellate, and was confined to testamentary causes. Most of the remainder came from the Court of Arches ; but during the earlier part of the 17th century there were also frequent appeals from the Court of Audience, which seems at that time to have exercised a concurrent jurisdiction with the Court of Arches in appeals of all kinds from the subordinate Courts of the province.‡ Others are described as appeals from the archbishop in person or his vicar-general, being probably such cases as had come before the Archbishop as Visitor, or had been heard in his domestic court, which was usually held at Lambeth Palace.§ So, too, of appeals from the Archbishop of York ; some came from the Prerogative or Exchequer Court, others from the Archbishop's Con-

\* See Note (2) in the Appendix. Of the High Court of Delegates of Ireland.

† See *Bird v. Smith*, Moore's Reports, p. 781 ; *Bishop of Exeter, &c. v. Withers* (Appeal No. 16 of the Return) and *Cowpland v. Senhouse, &c.* (Appeal No. 34).

\* See Note (1) in the Appendix. Of Appeals from the Admiralty and other Courts to the Delegates.

‡ See Note (3) in the Appendix. Of the Courts of Arches and of Audience.



sistory Court; others again are described as appeals from the Archbishop in person, or his vicar-general. (See Table I. in the Appendix.)

To complete the view of the judicial system which culminated in the High Court of Delegates, it should be added that each Archbishop exercised jurisdiction over the Diocesan Courts of his province, and in such Peculiar Courts as were exempt from episcopal, but not from metropolitan, control. In like manner each Bishop had jurisdiction in his own Peculiars, and entertained appeals from the Archdeacons of his diocese.\*

The appellate jurisdiction thus exercised was extremely wide and various. It was partly civil, partly criminal.

The civil jurisdiction comprised testamentary and matrimonial causes, and various kinds of ecclesiastical causes more properly so called, such as suits for church rates, tithes, and dilapidations, faculty causes, and pew causes, questions as to the election of churchwardens, causes *duplicis querelæ*, instituted by a clergyman presented to a benefice to compel the bishop to admit him, and other suits in which the right of presentation or title to a benefice was in dispute.†

The criminal jurisdiction embraced all "causes of correction," instituted against either a clergyman or a layman for any offence against the ecclesiastical law. Such, for instance, were suits against a clergyman for simony, non-residence, neglect of duty, or irregularity in its performance; against churchwardens for not duly rendering their accounts, or for making alterations in a church without a faculty; or against either clergyman or layman for heresy, non-conformity, immorality, or brawling.‡

There was also one class of causes of a mixed or intermediate character, partly civil and partly criminal, viz., suits for defamation, which have been described as "*causæ criminales civiliter intentatæ*," the charge preferred being of a criminal nature, but the proceedings usually taking the form of a civil suit.§ (*Oughton's Ordo Judiciorum*, vol. i., p. 380.)

Of this extensive jurisdiction comparatively little now remains to the present Court of Appeal. The two great classes of testamentary and matrimonial causes have only recently been transferred to the Courts of Probate and Divorce by the Acts 20 & 21 Vict. cc. 77 and 85 (1857). But even before the passing of those Acts, both the civil and the criminal jurisdiction of the Ecclesiastical Courts generally, and with them of the ultimate Court of Appeal, had in several important particulars been much abridged.

Of civil causes, suits *de jure patronatus*, or concerning the title to some preferment, which had been of frequent occurrence in the 17th century, seem to exist at the present day only in the form of a *duplex querela*.|| Suits for tithes of small value (where the title is not in dispute) have been transferred to the civil magistrates by successive enactments, such as the 7 & 8 Will. 3, c. 6, s. 1 (1693); 53 Geo. 3, c. 127, s. 4 (1813); 5 & 6 Will. 4, c. 74, s. 1 (1835); and 4 & 5 Vict. c. 33 (1841); the second of which Acts (53 Geo. 3, c. 127, s. 7) also transferred to the magistrates the adjudication of suits for church rates, where the amount does not exceed 10*l.*, and the validity of the rate, or the liability of the party charged, is not in question. The same Act abolished in great measure the peculiar character and disabling consequences of the penalties imposed by the Ecclesiastical Courts, by providing that the penalty of excommunication should be discontinued, except in definitive sentences, or in interlocutory decrees "having the force and effect of definitive sentences," pronounced as spiritual censures for offences of ecclesiastical cognisance, and that the only civil disability attaching to excommunication should be such imprisonment, not exceeding six months, as the Court pronouncing the sentence or decree should direct.

\* The Archbishop of Canterbury had 57 Peculiars in his province. *Godolphin's Repertorium Canonicum*, p. 119. For a list of the Courts which 40 years ago exercised peculiar and exempt jurisdiction, see the Return of such Courts ordered by the House of Commons to be printed, April 3, 1828. Paper 232. For a general account of the Ecclesiastical Courts *temp. Car. I.*, see Note (4) in the Appendix.

† Such causes are classed by Oughton with suits for dilapidations and tithes, under the general head of "Benefice Causes." (*Ordo Judiciorum*, vol. i., p. 237 *et seq.*)

‡ See the Report of the Commissioners to inquire into the Jurisdiction and Practice of the Ecclesiastical Courts (1832).

§ See post, p. 151.

|| The latest instances of an appeal in a benefice cause, other than a cause *duplicis querelæ*, seem to be those of *May v. Blackburne*, Appeal No. 125, and *Savery v. Blackburne*, Appeal No. 123, in the year 1710, where the question was as to the appointment of a vicar choral of Exeter Cathedral; and that of *Trapp v. Finlay*, Appeal No. 130, in the year 1712, where the appointment of lecturer to a church in the City of London was in dispute.

In like manner the criminal jurisdiction, with which the present Return is more properly concerned, has from time to time been greatly restricted. This is owing partly to the disuse of powers, such as the corrective discipline formerly exercised over laymen, which have never been absolutely withdrawn, but the employment of which would be repugnant to the ideas and feelings of the present day; but, in great measure, it is the result of positive enactments, some of which it may be well to specify.

One part especially of this jurisdiction, although in itself, perhaps, seemingly insignificant, has been the subject of repeated legislation. It will be seen, on reference to the Return, that several of the suits comprised in it were instituted against laymen for not resorting to their parish church, the neglect to do which was one of the offences constituting the crime of recusancy. Without entering into any minute discussion of the law on this subject, it may not be irrelevant to sketch very briefly the course of legislation in regard to it.

The jurisdiction which had long been exercised by the Ecclesiastical Courts in such cases, was expressly recognised and confirmed by the Act 5 & 6 Edw. 6, c. 1 (1552), by which the second Prayer-book of Edward the Sixth was established. That Act, after reciting that, notwithstanding the very goodly order set forth for Common Prayer and administration of the Sacraments, "a great number of people in divers parts of this realm, following their own sensuality, and living either without knowledge or due fear of God, do wilfully and damnably before Almighty God, abstain and refuse to come to their parish churches and other places where common prayer, administration of the sacraments, and preaching of the word of God, is used upon Sundays and other days ordained to be holy days," proceeded, by s. 2, to enact "for reformation" thereof, that "all and every person and persons inhabiting within this realm, or any other the King's Majesty's dominions, shall diligently and faithfully (having no lawful or reasonable excuse to be absent), endeavour themselves to resort to their parish chapel or chapel accustomed; (2) or upon reasonable lett thereof, to some usual place where common prayer and such service of God shall be used in such time of lett; (3) upon every Sunday and other days ordained and used to be kept as holy days; (4) and there and there to abide orderly and soberly during the time of common prayer, preachings, or other service of God there to be used and ministered; (5) upon pain of punishment by the censures of the Church." It was further enacted in the 4th section that all and singular the archbishops, bishops, and all other their officers exercising ecclesiastical jurisdiction, should have full power and authority to reform, correct, and punish, by censures of the Church, all persons who should offend against the Act within their jurisdictions.

The 5 & 6 Edw. 6, c. 1, was repealed in the following year (1553) by the 1 Mary, sess. 2, c. 2, but it was again partially revived by the Act of Uniformity passed on the accession of Elizabeth, the 1 Eliz. c. 2 (1558), which restored the second Prayer-book of Edward the Sixth, and repealed the Act of Mary so far as concerned that book. Ss. 1-4 of the Act of Edward the Sixth, however, relating to attendance at the parish church, were not expressly revived by this statute, but their provisions were embodied in almost identical terms in ss. 14-16 of the Act of Elizabeth, with the addition of a clause imposing a fine of 12 pence for every such offence, to be levied by the churchwardens.\* And a later Act of the same reign, the 23 Eliz. c. 1 (1581), intitled "An Act to retain the Queen's Majesty's Subjects in their due Obedience," which was specially directed against the Roman Catholics, while by s. 5 it imposed heavier penalties upon nonconformity, recoverable in the Court of King's Bench, expressly preserved by s. 15, the then existing jurisdiction of the Ecclesiastical Courts. In 1587 the 29 Eliz. c. 6 was passed "for the more speedy and due execution of certain branches" of the last-mentioned Act, and in 1593 it was provided by the 35 Eliz. c. 1, that persons obstinately refusing to come to Church should abjure the realm, or be liable to suffer as felons without benefit of clergy. But neither of these Acts made special mention of the Ecclesiastical jurisdiction.

On the accession of James, the whole of the Act 5 & 6 Edw. 6 seems to have been revived by the 2 Jac. 1, c. 25, s. 48 (1604), which, amongst other Acts, totally repealed the Act of Mary; and in the next year (1605) the existing Ecclesiastical jurisdiction was again

\* See *Stanfield v. Sterne*, and *Hodsdon v. Sterne*, Appeals Nos. 165, 166.



expressly saved by s. 39 of the 3 Jac. 1, c. 4, intituled "An Act for the better discovering and repressing of "Popish Recusants." There is no express provision on the subject in the present Act of Uniformity, the 13 and 14 Car. 2, c. 4 (1662), made perpetual by the 5 Anne, c. 5 (1706), further than that the preamble to the Act states that "a great number of people in divers "parts of this realm, following their own sensuality, "and living without knowledge and due fear of God, "do wilfully and schismatically abstain and refuse to "come to their parish churches and other public "places where Common Prayer, administration of the "Sacraments, and preaching of the word of God, is "used upon the Sundays and other days ordained and "appointed to be kept and observed as Holy-days," following the words of the statute 1 Eliz. c. 2; and then s. 24 confirms the "several good laws and statutes" then in force for the uniformity of prayer and administration of the Sacraments, and amongst them apparently the 5 & 6 Edw. 6, c. 1. But however this may be, it is quite certain that long after the passing of the present Act of Uniformity, the Ecclesiastical Courts, as the Delegates' records clearly show, continued to exercise jurisdiction in cases of non-attendance at church.\*

In course of time, however, various classes of Non-conformists were excepted by a series of Acts, commencing with the Toleration Act. By this Act, 1 W. & M., c. 18, ss. 4 and 16 (1688), Protestant Dissenters in general were exempted from prosecution in any Ecclesiastical Court for or by reason of their non-conforming to the Church of England, on condition of their taking the oaths and subscribing the declaration enjoined by the Act, and coming to some congregation or assembly of religious worship allowed or permitted thereby; and these conditions were subsequently relaxed by the Act 10 Ann., c. 2, s. 8 (1711); 52 Geo. 3, c. 155, s. 4 (1812), from which, however, Quakers were excepted; 15 & 16 Vict., c. 36 (1852); and 18 & 19 Vict., c. 86 (1855).

Any "papist or popish recusant," or any person who should "deny in his preaching or writing the doctrine of the Blessed Trinity," as declared in the articles of religion, had been expressly precluded, by s. 17 of the Toleration Act, from deriving "any ease, benefit, or advantage" from it; but this exception, as regards any persons denying the doctrine of the Trinity, was expressly repealed by the Act 53 Geo. 3, c. 160, s. 1 (1813). Relief had before this been offered by the Act 31 Geo. 3, c. 32, ss. 3 and 9 (1791), to Roman Catholics attending some congregation or assembly of religious worship thereby permitted, but only on condition of their taking the oath of abjuration required by that Act, for which another form of oath was substituted by the 10 Geo. 4, c. 7, s. 23 (1829). Subsequently, however, by the 7 & 8 Vict., c. 102 (1844), the penal clauses of the Acts 5 & 6 Edw. 6, c. 1, and 1 Eliz., c. 2, and the several subsequent statutes by which they had been confirmed, were, so far as they affected Roman Catholics, abolished. Two years later, by the Act 9 & 10 Vict., c. 59, s. 1 (1846), the clauses in the Act of Elizabeth were absolutely repealed, and the clauses in the Act of Edward VI. requiring all persons to resort to their parish church were repealed so far as they affected "persons dissenting from the worship or doctrines of "the United Church of England and Ireland," and "usually attending some place of worship other than "the Established Church." It was also provided (in s. 1) that no pecuniary penalty should be imposed on any person by reason of his absenting himself from his parish church. It will be observed, however, that neither of the most recent Acts which have been quoted, the 7 & 8 Vict., c. 102, and 9 & 10 Vict., c. 59, absolutely repealed ss. 1-4 of the 5 & 6 Edw. 6, c. 1, and as a partial and qualified repeal implicitly recognises the continued existence, so far as the repeal does not extend, of the enactments affected by it, it would seem to follow that those sections still exist as part of the statute law. That they were actually regarded as being in force until a comparatively recent date, is clear not only from the occurrence of several appeals to the Delegates in such cases during the earlier part of the 18th century, but from the fact that even so late as 1779, in the case of *Luke v. Whitaker* (Appeal No. 179), where proceedings were instituted against Luke for going out of church in time of service in a disorderly manner, two of the clauses in question are set out at

length in the articles, nor does any objection appear to have been taken on the ground that they were no longer in force. The result, then, would seem to be, that the clauses in the Act 5 & 6 Edw. 6, c. 1, requiring all persons to resort to their parish churches, although absolutely repealed as to Roman Catholics, and as to persons who dissent from the Established Church, and usually attend some other place of worship, are still to some extent unrepealed as to all other persons.\*

In other cases than those of recusancy or nonconformity the criminal jurisdiction of the Ecclesiastical Courts was practically much restricted by the Act 27 Geo. 3, c. 44 (1787), which reduced the time allowed for commencing proceedings in suits for defamatory words to six months, and in suits for fornication, incontinence, and brawling, to eight months, from the time when the words should have been spoken or the offence committed. More recently the jurisdiction of the Ecclesiastical Courts was abolished in suits for defamation by the Act 18 & 19 Vict., c. 41 (1855), and in suits against laymen for brawling by the 23 & 24 Vict., c. 32 (1860). But as regards causes of correction for fornication and incontinence, subject to the limitation in the 27 Geo. 3, c. 44, the jurisdiction of the Ecclesiastical Courts, although it has long been in abeyance, has never apparently been annulled.†

It does not seem necessary, in connection with this subject, to refer particularly to the Church Discipline Act, the 3 & 4 Vict., c. 86 (1840), the object of that Act being rather to regulate than to restrict the exercise of ecclesiastical jurisdiction.

## II.—CAUSES INCLUDED IN THE RETURN.

Of the various classes of causes which came before the Delegates on appeal from the Ecclesiastical Courts, the following Return is confined to two only, forming a very small proportion of the total number of appeals; viz., cases of doctrine and of discipline.

Cases of *doctrine* are, as a class, plainly distinguishable from others. It is less easy to say what cases should be included in the Return under the head of *discipline*. At first sight, cases of discipline might seem to be confined, as in the Church Discipline Act, to proceedings of a criminal nature against clerks in holy orders as being, in effect, the only cases of ecclesiastical discipline occurring at the present day. But during the greater part of the 300 years over which the Return extends, the corrective powers of the Ecclesiastical Courts were exercised with almost equal frequency and stringency over clergy and laity alike. To restrict, therefore, cases of discipline to criminal suits against the clergy only, would be to leave out of sight one great branch of the disciplinary jurisdiction formerly exercised by the High Court of Delegates, and would, it is thought, but imperfectly meet the objects of the present inquiry. On these grounds, cases of discipline have been regarded as including the numerous causes of correction in which the office of judge was promoted against laymen for offences of ecclesiastical cognisance, such as recusancy or nonconformity, immorality or brawling. That such causes were strictly cases of discipline would seem to be clear from the terms of the Articles in which the charges were set forth, the proceedings being expressly promoted for the correction of the accused, and the charges being described as *salutem anime et reformationem morum concernentia*. Further, it is conceived that a collection of such appeals will not be without interest, as illustrating the character and extent of the moral or spiritual jurisdiction which was exercised over the laity little more than 100 years ago.

Some explanation may seem to be required why suits for defamation, which have been already described as mixed, or quasi-criminal cases, have not been included in the Return. Their mixed or intermediate character seems to have consisted in this, that the accusation or complaint was in the nature of a criminal charge, but was, usually at least, preferred in the form of a civil suit, and for the reparation of a private injury. Out of 22 suits for defamation, of which a full account is contained in the records, only four were in form as well as in substance criminal prosecutions, the office of judge being promoted and articles brought in against the accused party *pro salute anime et reforma-*

\* In the First Report of Her Majesty's Commissioners for revising and consolidating the Criminal Law (1845), p. 35, it is stated on the authority of the then Queen's Advocate General, that "there is no instance on record of a prosecution for this offence" (recusancy) "in the Spiritual Courts for the last 150 years." This is evidently a mistake. There were Appeals to the Delegates in two such cases from the Consistory Court of York, in the year 1749. (Nos. 165, 166.)

\* The Commissioners for revising and consolidating the Criminal Law, in their First Report (1845), p. 35, seem to have recommended that these clauses should be altogether repealed.

† The abolition of this jurisdiction over laymen seems to have been recommended in the Report of the Commissioners to inquire into the Jurisdiction and Practice of the Ecclesiastical Courts (1832).



*lione morum*. In one of the four cases the party charged with defamation was a clergyman (*Jackson v. Hobday*, Appeal No. 54). In each of the three other cases a clergyman was the promoter. In all therefore the defamation would be in the nature of a public offence against the clerical or sacerdotal office. In the 18 remaining cases the plaintiff proceeded as in a civil suit, by libel. There are, however, besides the above, a great number of suits for defamation, the mode of proceeding in which cannot be ascertained from the existing records. But, whatever might be their form, suits for defamation seem to have been substantially causes of correction. The libel in which the charge was set forth usually concluded with a prayer that the accused party might be canonically corrected as having committed a breach of ecclesiastical discipline, and penance in the form of a public retraction was a recognised mode of correction in the event of the charge being proved. The Delegates' records supply an instance of this in the case of *Snell v. Bishop*, which came before the Consistory Court of Norwich in the year 1682, where Snell, the party charged with defamation, having appeared and submitted himself to the correction of the Court, was sentenced to do penance in the parish church of Darsham, on Sunday after divine service, by repeating after the minister, in the presence of the churchwardens, a confession of his contrition for having uttered the defamatory words in question contrary to the rules of charity and good manners. But, although there are one or two such cases which present some points of interest, appeals to the Delegates in suits for defamation were both so numerous and, generally speaking, so trivial and insignificant in their character, that their insertion would probably have added little to the value of the Return, which, even without them, may possibly seem too long. They have therefore, with one or two exceptions, been altogether omitted. It should, however, be stated that prior to the temporary abolition of the Ecclesiastical Courts in 1641, the commissions of Delegates in defamation cases, so far as they have been traced, seem to have been exclusively composed of civilians or doctors of laws, without either peers or common law judges, or bishops and other ecclesiastical persons.

On the other hand, considering the greater historical importance of the earlier records, fragmentary and obscure as they are, it was thought that, during the earlier periods of the Return, rather more latitude should be taken. With this view, down to the year 1641, insertion has been given to several suits, most of them "benefice causes," which may seem to be not strictly within the title of the Return. Occasionally, also, during the later periods, appeals have been introduced, which, although not technically cases of discipline, seem to have involved any points of ecclesiastical interest.—(See Table II. in the Appendix.)

### III.—PROCEDURE.

I will now proceed to give a brief sketch of the ordinary procedure in a cause of correction, both in the "Court of First Instance," in which the suit was originally promoted, and on appeal to the Delegates.\* There were many Causes which might be promoted either in the Archdeacon's Court, or in the Consistory Court of the Bishop, or lastly, by Letters of Request from the Bishop, in the Archbishop's Court; but in early times Letters of Request seem to have been seldom used, and it will be seen from the Return that a great number of cases which ultimately came before the Delegates, including almost all causes of correction for not attending church, and several suits against laymen for immorality, had been originally instituted in an Archdeacon's Court, whence they were carried by successive appeals, first to the Diocesan, thence to the Provincial, and lastly to the Imperial tribunal.

First, then, as to the mode of procedure in the Inferior Court, or Court of First Instance. There were three distinct modes,† in which such causes might be instituted; (1) *denunciation*, where the offender was detected or presented by the churchwardens or sidesmen; (2) *accusation*, where any private person came forward as promoter or prosecutor; and (3) *inquisition*, where the Court spontaneously *ex mero motu* proceeded against the offender, in which case it usually appointed

some proctor, hence called a "necessary promoter," to conduct the prosecution.\* The Return contains instances of each mode of proceeding. In all cases the proceedings commenced with the issue of a citation from the judge of the court, calling upon the party accused to appear and answer certain articles, "concerning his soul's health and the reformation of his manners and excesses," and setting forth briefly the nature of the charge. If, after due service of the citation, he failed to appear on the day appointed, he was liable to be pronounced contumacious, and to be excommunicated. Supposing, however, that he appeared and admitted the offence charged, sentence was passed upon him in a very summary manner. If, on the other hand, he denied the charge, the course of proceeding was ordinarily as follows: On the appearance of the accused, articles were brought in on the part of the promoter, setting forth the charges in detail. The admission of these articles might be opposed by the defendant, but in the event of their being admitted, he had to give either an affirmative or a negative issue thereto, either wholly or partly admitting or denying the charges. When issue had thus been joined, the promoter might further call upon the defendant to give his "personal answers," on oath, to the several articles, and although by the Act 13 Car. 2, c. 12, s. 4, it was made unlawful for any ecclesiastical judge to tender any oath by which any person might be charged or compelled to criminate himself, this prohibition seems in practice to have been systematically disregarded or evaded.†

After the defendant had given in his personal answers, the next step was for the court to assign a "term probatory," that is, a time within which the promoter had to prove the truth of the articles. Witnesses were then produced either before an examiner of the court or before a commissioner specially appointed for the purpose, and were examined on the several articles, and cross-examined on written interrogatories prepared by the defendant, and handed to the examiner. The examination was conducted in private, and the evidence, which was taken down in writing by the examiner, was kept from the knowledge of both parties. When the promoter had tendered for examination all the witnesses on whom he proposed to rely, but without knowing what any one of them had said, he prayed publication of the evidence; but publication might be prevented by the defendant praying an allegation, which he brought in in due course. The promoter's answers on oath were then given in, and the defendant produced his witnesses, who were examined and cross-examined in secret in the same way as the promoter's witnesses had been. When the defendant considered that he had sufficiently proved his case, the promoter might bring in a responsive allegation, and the same formalities were again gone through. At length, both parties having concluded their pleadings, and examined all their witnesses, publication of the evidence passed, and the parties then for the first time became aware of the nature of the evidence given as well by their own as by their opponent's witnesses. Either party might then take exception to the evidence of any of his opponent's witnesses on the ground of character or otherwise; and if this as allowed, an exceptive allegation had to be brought in, and evidence taken thereon exactly as in the principal cause. When all the pleadings and evidence were finally concluded, the cause was "assigned for sentence on the first assignation," as it was called (a merely formal proceeding), and afterwards, "on the second assignation," and "for informations and sentence;" in other words, it was appointed for hearing, either indefinitely (*quandocumque*), or on some particular days on which, unless it were postponed, the trial actually, took place.

Secondly, as to the procedure in the Court of Delegates.

In the event of a party desiring to appeal from the decision of a Metropolitan or Exempt Peculiar Court, his proctor addressed a petition to the Sovereign in Chancery, upon which a Commission of Appeal, the draft of which was prepared by the appellant's proctor, was issued under the Great Seal, appointing certain Commissioners or Delegates for the trial of the cause.‡

\* In such cases, in the event of an appeal, it was the practice to make the judge a party. (See e.g. Appeal No. 133.)

† See Note (5) in the Appendix. Of Personal Answers and Canonical Purgation.

‡ In Dr. Wynne's Life of Sir L. Jenkins, a letter is printed, dated 18th May 1685, and signed by twelve doctors of laws, in which they refer to their "Petition and Reasons for stated Judges in the Court of Delegates," (or according to the table of contents, for "a Standing Commission of Delegates,") and they request Sir L. Jenkins, then Judge of the High Court of Admiralty, in company with the Dean

\* For a more detailed account of the procedure in the Ecclesiastical Courts generally, see the Report of the Commissioners appointed to inquire into the jurisdiction and practice of the Ecclesiastical Courts in England and Wales, and the jurisdiction of the Delegates. Ordered, by the House of Commons, to be printed, 27 Feb. 1832. See post, p. 193.

† Oughton's *Ordo Judiciorum*, vol. i., p. 215.



This Commission contained "a Clause of Quorum," as it was called, directing that *two*, at least, of the Delegates should be present at all the ordinary proceedings, and that *three*, at least, or a larger number, according to the strength of the Commission, should be both present and consenting on passing the final sentence. The proceedings in the Court of Appeal commenced with the presentation of this Commission by the appellant's proctor to some of the Delegates named in it, which took place sometimes within a few days after its issue, but often not until several weeks or even months had elapsed. The usual instruments were then issued, namely, an Inhibition and Citation, inhibiting both the Court below and the adverse party from taking any steps in furtherance of the decree appealed from, and citing the adverse party to appear; and a Monition, monishing the Court below to transmit to the Court of Appeal the original or an authentic copy of all the proceedings in the cause, or, as it was shortly termed, the "Process." After being duly served, these instruments were returned into Court, and when the respondent had appeared, and the proctors had brought in the proxies by which they were authorised to act for their respective parties, the appellant's proctor brought in his "Libel," to which in due course issue was joined on the part of the respondent. The appellants' proctor was then "assigned to prove." If the appeal was from a grievance (a term which will presently be explained) no proofs were admissible beyond the evidence contained in the process. In an appeal from a final sentence it would seem that either party might, under certain circumstances, make fresh allegations, and bring in further proofs. (*Ordo Judiciorum*, vol. i., p. 458.) After the process and the other evidence (if any) had been brought in,\* the appeal, as in the Court below, was assigned for sentence on the *first* assignation, and again on the *second* assignation and for informations and sentence, *i.e.*, for the actual hearing. Usually, up to this point, all the proceedings in the Appeal, as was permitted by the terms of the "Quorum Clause" in the Commission, took place before two or three only of the *Civilian* members of the Court. At the hearing (or "informations") and sentence a larger number attended, but it very frequently happened that some of the Delegates named in the Commission of Appeal from first to last took no part whatever in the proceedings.

Such is a mere outline of the ordinary course of an appeal in a cause of correction. Any more detailed attempt to describe the practice of the Court would obviously be out of place here. It may be well, however, to add that, except by consent of the proctors on each side, the several steps in an appeal could only be taken one at a time on so many successive Court days, of which there were only four in each term. It is obvious that such a system of procedure offered to either party great facilities for vexatiously prolonging the proceedings; and the result is apparent on the face of the Return in the great number of appeals, no less than 66, being more than one-third of the whole number, which were discontinued or abandoned, and in the great length of time over which many of them extended.

One or two other points should be noticed in connection with the procedure of the Court. It will be seen that many of the appeals comprised in the Return related to the admission or rejection of allegations tendered on either side, or to some other incidental order or decree of the Court appealed from. Such appeals were technically termed Appeals from a *Grievance*, as distinguished from Appeals in the *Principal Cause*, *i.e.*, from a final or definitive sentence which expressed the judgment of the Court on the principal question at issue. In an appeal from a grievance, if the decree or order was reversed by the superior court it was the practice for that Court to "retain the principal cause" for hearing on the main issue. With the respondent's consent this was occasionally done even where the decision of the Court below was affirmed,† but more usually in that case the cause was "remitted" to the Court below,

by which it was then resumed. This did not, however, preclude either party from appealing a second time from a subsequent decision of the same Court, so that in one and the same cause there might be, and not unfrequently were, two distinct appeals to the Delegates; first, from some incidental order or grievance, and afterwards from the final sentence.

Such separate appeals must, however, be distinguished from those cases in which, without any second appeal, a second commission was appointed, under the name of a Commission of *Adjuncts* or a Commission of *Review*. These two kinds of commissions were also quite distinct the one from the other. If some of the Delegates named in the original commission died before judgment was given, or if they were equally divided in opinion, or even, it would seem, when some of the Commissioners had been appointed to other offices than those which they held at the date of the commission of appeal,\* and probably in some other cases where it was considered desirable to increase the strength of the Court, or to infuse new elements into it, either party might, as before, present a petition in Chancery for a Commission of Adjuncts, so called because it included other Delegates added or *adjoined* to those on the original commission. Similarly, if occasion required, a third or even a fourth Commission, of *Adjuncts super Adjuncts*, might be issued to continue the hearing of the appeal. On the other hand, a Commission of Review, as its name imports, was appointed to reconsider or review the sentence pronounced by a former Commission of Delegates. It was granted, not as of right but of favour, and only on a special petition† addressed to the Sovereign in Council, and thence referred to the Lord Chancellor, who, after hearing the parties by counsel, reported whether in his opinion the Commission ought to be conceded or not. The Commission of Review was addressed to an entirely new set of Delegates, who reheard the appeal *de novo*, and might reverse or vary or confirm the former decision.

#### IV.—RECORDS OF THE COURT.

The records of the High Court of Delegates from which the Return has been compiled are the following:—

##### (1) and (2).—*Act Books and Assignation Books.*

These contain minutes of all the proceedings from day to day in the Court of Delegates, arranged in order of date. They differ only in this, that the Assignation Books contained a list, prepared beforehand, of the business to be transacted on the next Court day, to which, when the Court was held, the Registrar added his rough notes or minutes of what was actually done. The Act Books contain fair copies of the same minutes as finally settled in fuller and more formal terms.

The series of *Act Books* is very incomplete. The earliest volume dates from the 15 January 1538–9, to the 11 December 1544, thus commencing within six years from the first erection of the Court; but there is no other Act Book belonging to the 16th century. In 1601 the series recommences, and, excepting a break of about two years, from 1615 to 1617, is continued uninterruptedly until 1650. From November 1650, until the Restoration no Act Book seems to have been kept, but in August 1660 the series was resumed, and continued until December 1695, but several of the Act Books of this latter period are missing, and from February 1684–5, to December 1695, the Acts are unbound. These Act Books, consisting in all of 22 thick folio volumes, are, as might be expected from their age, in a damaged condition. The peculiar Law-Latin, and the crabbed and curiously contracted characters in which the minutes are written, render them by no means easy to decipher. Several of the volumes being found to have no index, it was necessary to make indices for them before commencing the proper work of the Return.

The *Assignation Books* commence in the year 1650, and continue in an unbroken series, some brief intervals excepted, from that time until the abolition of the Court by the Acts of 1832 and 1833. In the first year 1650, the entries in these books are in Latin; but from the 16 April 1651, to the end of July 1660, for a period of nine years, they are in English. Soon after the Restoration, on the 1st August, 1660, Latin was resumed, and continued to be used from that time until the year 1733, from which latter date, being just 200 years after the first establishment of the Court, and 100 years

of the Arches, to wait upon His Grace (the Archbishop of Canterbury) to move him to deliver the petition to his Majesty. It does not appear whether anything further was done in the matter. (Vol. ii., p. 695.)

\* In later times, after the process had been transmitted from the Court below, the parties also brought in for the use of the Delegates copies of their respective "Cases" (as they are called) containing an abstract of the proceedings up to the time of the hearing, together with an appendix of such parts of the evidence as were most material to the issue. Such printed Cases exist from the year 1796; but it does not appear to have been the practice to mention them in the Minutes of the Proceedings.

† In *Chamberlayne v. Hewetson*, Appeal No. 100, *Harris v. Twitney*, Appeal No. 102; *Bingham v. Duke of Portland*, Appeal No. 181. In *Weston v. Hand*, Appeal No. 154, it does not appear from the minutes that the respondent's consent was given.

\* See Oughton's *Ordo Judiciorum*, vol. i., p. 437 (notes).

† See note in 4 *Vesey's Reports*, 211. Strictly it was a petition for a rehearing, rather than an Appeal, and the petitioning party was not called "*pars appellans*," but "*pars supplicans*."



before its abolition, the records of the Court seem to have been uniformly kept in English. The character of the writing in the earlier volumes generally resembles that of the Act Books, but the minutes being more roughly written, with frequent erasures and interlineations, are even more illegible. The Assignment Books consist of 57 folio volumes, of which the first 24 and one other were without any index. This deficiency had to be supplied.

(3).—*Repertory Books.*

These contain, in eight folio volumes, an apparently complete list of all Appeals brought before the Delegates from the 26th May 1619, to the 10th July 1789, from which latter date the list seems to have been discontinued. They give the names, and, in almost every case, a brief description of the parties; the names, and generally the titles of the Delegates commissioned to hear the Appeal; and the name of the Court appealed from, the date of the Commission of Appeal, and of its introduction into Court or presentation to the Delegates. They also contain similar entries of some "special" or "original" Commissions, apparently issued for the trial of Causes which were not Appeals from any court. In these books also the entries were in Latin until the year 1733, with the exception of the last nine years preceding the Restoration. The earlier volumes are a good deal damaged, and difficult to decipher.

(4).—*Processes.*

The process has been already described as an official copy, which was transmitted to the High Court of Delegates from the Court below, of all the proceedings in the cause up to the time of the appeal. If the cause had originated in a Court below that from which the appeal was made to the Delegates, the process transmitted to the Delegates included a copy of the process which had in like manner been transmitted to the Court appealed from by the Court of *First Instance*, as it was called, *i.e.*, the Court in which the cause was originally instituted. Thus, if the cause had been instituted in an Archidiaconal Court, thence appealed to the Diocesan, thence to the Provincial Court, and lastly to the High Court of Delegates, the Delegates' Process would ordinarily contain within it the several processes which had been transmitted by the inferior courts to the courts respectively above them, so as to form a complete record of the proceedings from the first institution of the cause up to the time of the appeal. These processes, containing as they do complete copies of all the pleadings and depositions up to the date of the appeal, form by far the most valuable part of the records. They commence in the year 1609, but from that date to 1650 there are only seven processes extant. During the next 10 years they number more than 50; and from the year 1660, the series appears to be almost, if not quite, complete. It must be observed, however, that many appeals to the Delegates were abandoned before any process was transmitted, and that without the process there are often no means of ascertaining from the records what was the nature of the cause, or whether or not it was one which ought to have been included in the Return. These processes, 1,455 in number, have lately been removed to the Public Record Office in Fetterlane.\* They had shortly before been rebound in 736 folio volumes, and are for the most part in good preservation. The writing also is generally far more legible than that of the other records. As in those records Latin was the language used in all the formal proceedings until the year 1651, from which date until 1660 they are in English, but Latin was resumed at the Restoration and continued in use until 1733, when English was finally adopted. The examination of the processes required in preparing the Return has been greatly facilitated by a very useful catalogue, now out of print, compiled by Dr. Addams.

(5) and (6).—*Sentences and Interlocutory Decrees.*

It was formerly the practice for the proctors in the cause to hand in or "porrect," engrossed on parchment, the sentences which they respectively desired the Court to pronounce, and the sentence which, with or without modification, received the approval of the Court was signed by the Delegates present, or so many of them as concurred in it. The earliest roll or bundle of sentences dates from the year 1585, and, excepting a break of six years between 1622 and 1628, and again from 1739 to

1760, they seem to be nearly complete; but many of the earlier sentences are so much torn and obliterated as to be quite illegible. From about the middle of the 18th century the practice of porrecting sentences seems to have been gradually discontinued, and "interlocutory decrees, having the force and effect of definitive sentences," were substituted, of which the only official record is a brief and formal minute contained in the Assignment Books. Except during rather more than nine years from 1651 to 1660, the sentences were drawn up in Latin down to the year 1733. There is also a single volume containing stamped copies of all the interlocutory decrees pronounced by the delegates from the 22nd June 1790 to the 10th July 1824. These seem to have been copied *verbatim* from the entries in the Assignment Books. The subsequent decrees are unbound.

(7).—*Printed Cases.*

Like those which are now brought in by the appellant and respondent in appeals heard by the Judicial Committee of the Privy Council, these Cases contained an abstract of the proceedings prior to the hearing of the appeal, together with an appendix of such portions of the evidence produced in the Court below as were most material for the information of the Delegates as to the question at issue. They date from the year 1796 to the abolition of the Court, and are bound in 10 large folio volumes.

(8).—*Other Documents.*

The above are the records from which mainly the Return has been compiled; but there are also a large number of original commissions of appeal, commencing apparently in 1663; 13 volumes of depositions, dating from 1634 to 1685; 5 volumes of personal answers, from 1677-8 to 1694, and many bundles of instruments and other cause papers. The nature of the commissions of appeal has already been described. Each commission is engrossed on parchment, and contains the names and descriptions of the Delegates commissioned to hear the appeal in which it was issued, the names and descriptions of the parties, and a formal recital of the fact, but not of the grounds, of the appeal. It also contained the usual "*quorum* clause," specifying how many of the Delegates must be present at all the ordinary proceedings, and how many when sentence should be pronounced. These commissions of appeal have not been examined with a view to the Return, as they would have required much previous arrangement, and the information to be gathered from them is contained in a far more accessible form in the Repertory Books. The volumes of *Personal Answers* and *Depositions*, all of which are in English, have been examined, but very little has been found in them bearing upon cases of doctrine or of discipline.

The following statement will show more concisely the periods respectively covered by the several records:—

(1.) <i>Act Books.</i>	No. of Vols.
15 January 1538-39 to December 1544	- 1
9 October 1601 to 28 April 1615	- 5
7 May 1617 to 14 November 1650	- 13
1 August 1660 to 20 July 1663	- 1
28 April 1666 to 4 July 1672	- 1
13 January 1679-80 to 6 February 1684-85	- 1
	<hr/> 22

27 February 1684-85 to 23 December 1695 Unbound.

(2).—*Assignment Books.*

	No. of Vols.
23 January 1649-50 to 14 December 1838	- 57

(3).—*Repertory Books.*

26 May 1619 to 10 July 1789	- - - 8
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(4.) *Processes.* (1455.)

1609 to 1838	- - - 736
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(5.) *Sentences.*

1585 to 1622 and 1628 to 1739.	From	Engrossed on separate skins of parchment.
1623 to 1628, and from 1739 to 1760,		
the sentences are missing, but there are a few of later date.		

(6.) *Interlocutory Decrees.*

22 June 1790 to 10 July 1824	- - - 1 volume.
The remainder, of a subsequent date	Unbound.

(5.) *Printed Cases.*

1796 to 1834	- - - 10 volumes.
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\* The other records described in this Introduction are in this Registry.



(8.) *Commissions of Appeal*, 1663 to 1838 On parchment.*Depositions of Witnesses*, 1634 to 1685 - 13 volumes.*Personal Answers*, 1667-68 to 1694 - 5 volumes.

And a number of Instruments and miscellaneous Cause Papers.

The nature and extent of the information to be gathered from the existing records will be seen more clearly by sub-dividing the whole period comprised in the Return into shorter periods, according to the records available for each.

## FIRST PERIOD.—(1533—1601.)

## RECORDS.

1. *Act Book* (1 vol.) 1539—1544.
2. *Sentences*, 1585—1601.

Owing to the almost total want of materials, this part of the Return is virtually a blank. It might have been hoped that the one extant *Act Book* of this period, dating as it does so nearly from the first erection of the court, would have afforded valuable information on the subject of the Return. Unfortunately the entries contained in it are so scanty, and merely formal in their character, that nothing whatever has been found to show that any one of the appeals to which they relate was a case of doctrine or of discipline. There are indeed several causes, the parties to which were ecclesiastical persons, but it cannot be inferred from this that they were causes of correction.

Reference has also been made to Archdeacon Hale's *Precedents in Criminal Cases*;\* but none of the cases there collected has been identified with any appeal to the Delegates.

As regards the composition of the court, the Delegates whose names occur in this *Act Book*, with a single exception† (it is believed), are invariably described either as “*venerabiles viri magistri*,” or simply “*magistri*,” with the occasional addition of “*legum doctores*,” but the same names appear both with and without this addition.

Towards the end of this period (from 1585 to 1600) a few cases have been extracted from the manuscript sentences read or promulged by the Delegates, which are the only extant records of the time. But many of these sentences are wholly or partly illegible, and, even when they can be deciphered throughout, the information to be gathered from them is generally very scanty. The only date that can be given in any case is the date of the sentence. There is nothing to show the exact date of the appeal, nor, except occasionally from some incidental notice in the sentence, the nature of the cause, the ground of the appeal, or the course of the proceedings in the court or courts below. It should also be observed that, as in the later period so no doubt in this, a great many appeals would be abandoned without any sentence being pronounced. In such cases, therefore, there is no information whatever to be obtained from the records.

## SECOND PERIOD.—(1601—1618.)

## RECORDS.

1. *Act Books* (6 vols.) { 1601—1615.  
1617—1618.
2. *Sentences*, 1601—1611.
3. *Processes* (3 only).

The *Act Books* of this period contain rather more but still very scanty information as to the nature of the causes to which they relate. The sentences from 1607 to 1612 are almost entirely illegible: during the remainder of the period they do not always show the nature of the cause before the court, and in a great number of appeals no sentence whatever was pronounced. Of the very few processes belonging to this period, one only‡ relates to a cause which falls within the Return.

\* The full title of this curious and valuable volume is “*A Series of Precedents and Proceedings in Criminal Causes, extending from the year 1475 to 1640, extracted from Act Books of Ecclesiastical Courts in the Diocese of London, illustrative of the Discipline of the Church of England. To which is prefixed an Introductory Essay. By William Hale Hale, M.A., Archdeacon of London. F. & J. Rivington. 1847.*”

† One Act, dated 2nd December 1544, is said to have been done, “*coram eximius viris Domino Thomā Moyle Milite, Johanne, Barber et Ricardo Lyell, Delegatis, &c., in longā Capellā infra Ecclesiam Cathedralē Divi Pauli London.*” Sir Thomas Moyle was then Speaker of the House of Commons. He was present at two other Acts in the same Appeal, and from a note of the Commission at the end of the volume it appears that he was to be “*semper unus*” of those present. The cause seems to have been a Tithes Cause.

‡ *Large v. Bunce*, Appeal No. 24.

## THIRD PERIOD.—(1619—1640.)

## RECORDS.

1. *Act Books* (9 vols.), 1619—1640.
2. *Repertory Books*, 1619—1640.
3. *Sentences*, 1619—1622 and 1628—1640.
4. *Processes* (4 only).
5. *Depositions* (1 vol.), 1634—1640.
6. *Old Book of Precedents* (1 vol.), of various dates.

The remarks made on the last preceding period apply to this period also. The processes are still extremely few, and the *Repertory Books*, although they state from what court the appeal was brought, and give the names of the Delegates, as well as the names and, generally, the descriptions of the parties, afford little or no information as to the nature of the causes. The sentences from 1622 to 1628 are missing: for 1637 and 1638 they are illegible.

During this and the preceding two periods it is probable that most cases of doctrine and discipline went before the Court of High Commission.\* In one such case, *Wild v. Ackson* (A.D. 1638), the return to a commission, issued from the High Commission Court, for the examination of witnesses, has by some accident been bound up in a volume of Delegates' Processes. Ackson, who was vicar of Painswick, in Gloucestershire, was charged with immorality, neglect of duty, &c.

One case in the Return, *Cowpland v. Senhouse, &c.* (Appeal No. 34), came before the Delegates from the “*King's High Commissioners for Ecclesiastical Causes in the diocese of Chester.*” But this is a solitary instance, and was not an appeal, properly so called, but a case of revision or rehearing, for an appeal could hardly lie from one Royal Commission to another.

In another case, *Withers v. Leeche, &c.* (Appeal Nos. 15-16), Withers, a vicar choral of Exeter Cathedral, appealed to the Delegates from a sentence of deprivation originally pronounced by the Bishop of Exeter. The Delegates reversed the sentence and restored him to his office, but he seems to have been again deprived very soon afterwards by a Court of High Commission, and although the case was apparently then pending in the High Court of Delegates before a Commission of Review, he seems to have made no attempt to procure the reversal of the sentence of the High Commission Court.

## FOURTH PERIOD.—(1641—1660.)

## RECORDS.

1. *Act Books* (3 vols.), 1641—1650.
2. *Assignment Books* (8 vols.), 1650—1660.
3. *Repertory Books*, 1641—1660.
4. *Sentences*, 1641—1660.
5. *Processes*, 1650—1660.
6. *Depositions* (4 vols.), 1641—1660.

For this period the Return is a blank. The Act 16 Car. 1, c. 11, which abolished the High Commission Court, also by s. 4 deprived the ordinary Ecclesiastical Courts of all penal jurisdiction “*from and after the 1st day of August 1641,*” and it was supplemented in the same year by the Act 16 Car. 1, c. 27, intituled, “*An Act for disabling all Persons in Holy Orders to exercise any Temporal Jurisdiction or Authority.*” By these two statutes all ecclesiastical jurisdiction, properly so called, was in fact abolished.

\* See the Calendar of State Papers, Domestic Series, especially the vols. for 1634-5, 5, and 5-6, edited by Mr. Bruce, which contain copies of the Acts of the High Commission Court for those years; also No. 34 of the Surtees' Society's Publications; and The High Commission, Notices of the Court and its Proceedings. By J. S. Burn. London. J. Russell Smith. 1865. See also *Cawdrey's Case* 3 *Coke's Reports*, p. xv, and other Cases in the Reports of the Common Law Courts.

In Hackett's Life of Lord Keeper Williams, p. 97, it is said that “*the Consistories of the Suffragans in the Province of Canterbury became in a manner despicable, because the matters belonging to every diocese were followed before the High Commission. That it might be said to the neglected Prelates at home, Are ye unworthy to judge the smallest matters?*”

Bartholomew Legatt and Edward Wightman, who were burnt for heresy in 1612, had been tried, the former in the Consistory Court of the Bishop of London, who “*chose many reverend bishops, able divines, and learned lawyers to assist him,*” the latter by the Bishop of Coventry and Lichfield “*with the advice and consent of learned divines and other persons learned in the laws assisting him in judgment.*” In each case the bishop certified the condemnation by a *Significavit* to the Court of Chancery, whereupon a writ issued *de Heretico comburendo*. It would seem that Wightman was brought before the Court of High Commission also, for in the Royal Mandate to the Lord Chancellor for the issue of the writ, he is described as having “*main- tained his said most perilous and dangerous opinions,*” not only before the bishop, but “*also before our Commissioners for Causes Ecclesiastical within our Realm of England.*” (See Howell's State Trials, vol. ii., p. 727, &c.) Neither case came before the High Court of Delegates.



The last Commission during this period, which included any bishops or other ecclesiastical persons, was a Commission of *Adjuncts*, dated 1st January 1641-42, and brought in 17th February 1641-2, in an appeal from the Court of Audience by *Sir Robert Payne, Knt.*, against *Patience Wayte*. This was a matrimonial suit.

From the end of the year 1641 until the Restoration, the appeals to the Court of Delegates, which consisted during that period exclusively of common law judges or other laymen and civilians, came, almost without exception, either from the Prerogative or the Admiralty Court. It appears, however, from the Repertory Book, that between 1650 and 1660 a considerable number of "special" commissions were issued for the trial of particular causes which do not appear to have been appeals from any court. In one of these, dated 31 May 1652, and brought in 2 June 1652, in the case of *Isabella Davenport* against *Ffulke Lucy* (and others), the first name on the commission is that of Oliver Cromwell, "Ld. Generall of England." The names of Fleetwood, Lambert, Harrison, and Desborough are of frequent occurrence on such special commissions about this time. As has been already stated, during the last nine or ten years of this period, from 1651 to 1660, all the records of the Delegates seem to have been kept in English, but shortly after the Restoration Latin was resumed.

#### FIFTH PERIOD.—(1660—1789.)

##### RECORDS.

1. *Act Books* (3 vols.) { 1660—1663.  
1666—1672.  
1679—80—1684.
2. *Assignment Books* (41 vols.), 1660—1789.
3. *Repertory Books*, 1660—1789.
4. *Processes*, 1660—1789.
5. *Sentences*, 1660—1789, &c.
6. *Commissions of Appeal*, 1663—1789.
7. *Depositions of Witnesses* (8 vols.), 1660—1685.

During this period the Return may be considered as comparatively complete, except that there may have been cases of doctrine or of discipline in which the appeal to the Delegates was abandoned before any process was transmitted, and in which there is nothing in the other records to show the nature of the cause.

#### SIXTH PERIOD.—(1790—1838.)

1. *Assignment Books* (8 vols.), 1790—1838.
2. *Processes*, 1790—1838.
3. *Commissions of Appeal, &c.*, 1790—1838.
4. *Interlocutory Decrees*, 1790—1838.
5. *Printed Cases* (10 vols.), 1796—1834.

The same observation applies to this period; the information hitherto supplied by the Repertory Books can still, for the most part, be gathered, with rather more trouble, from the Assignment Books.

#### V.—FORM OF THE RETURN.

I must now say a few words with regard to the form of the Return. In this some slight alterations have been made, which shall now be specified under the several heads of the Return as originally framed.

##### (1.)—*The Date of the Cause.*

It seems obvious that by this is meant the date of the *Appeal*, which may be taken to be either the date of the Commission of Appeal, by which the Delegates were appointed, or the day on which the Commission was presented to the Court. Both these dates have been given where it could be done; but in some cases only one date, in others neither, could be ascertained. The dates of the first institution of the cause, and of the decree or decrees appealed from, have also been given in many cases under the head of "Observations." It is believed that these and the other dates given under that head will be found useful for the purpose of reference, in case it should be desired to verify any of the statements contained in the Return.

##### (2.)—*The Names and Descriptions of the Parties.*

These have generally been given fully. Where the parties are not fully described in the Act Book, or Assignment Book, their descriptions have been supplied, where it could be done, from the processes or other documents.

##### (3.)—*The Court Appealed from.*

This also has generally been given.

Where an Appeal passed through more than one court, that court from which the Appeal came direct to the Delegates has been placed at the head of the column, and so on down to the Court of First Instance; e.g., where a cause had been originally instituted in the Court of the Archdeacon of Totnes, thence appealed to the Consistory Court of Exeter, thence to the Court of Arches, and thence to the Delegates, the Return is filled up thus:—"Arches on Appeal from the Consistory of Exeter, on Appeal from the Court of the Archdeacon of Totnes."

##### (4.)—*The Nature of the Cause.*

Under this heading the nature of the cause has been given very briefly, further particulars being reserved for the column of *Observations*. In the earlier periods, however, the nature of the cause cannot always be clearly ascertained.

##### (5.)—*The Names and Descriptions of the Delegates and Con-delegates.*

Prior to the commencement of the Repertory Books it is only from the sentences that a complete list can be obtained of the Delegates commissioned to hear any Appeal. In those cases therefore in which no sentence was pronounced or preserved, all that can be given are the names (with or without descriptions as the case might be) of the Delegates who are mentioned in the minutes as being at one time or another present during the Appeal. But as it frequently happened that Delegates were named in the Commission of Appeal, who took no part whatever in the proceedings, and are therefore not named in the minutes, the list is in many such cases probably incomplete.

Where the descriptions of the Delegates in any cause are not fully given in the records of that cause, but have been gathered from the records of other causes or from other sources, the descriptions so supplied are enclosed in parenthesis, thus ( ).

The names of those Delegates who were present when the sentence or decree was pronounced, if there was only one such sentence or decree, are marked with an asterisk, thus \*. If the same commission pronounced two sentences or decrees, one on a grievance, the other in the principal cause, a cross † is prefixed to the names of those who passed the first, and an asterisk \* to the names of those who passed the second or final sentence or decree. In the names of the Delegates, the spelling of the records in each cause has been followed. This will account for the various ways in which the names of some Delegates are spelt.

The words "and Con-delegates" have been omitted from the heading of this column, for although the term is occasionally used to denote the civilian members of the Commission, it seems more properly to have been simply a relative term, like "colleague," "co-partner," or "co-trustee," and to have been used for those members of the Commission—whether bishops, judges, or doctors of laws—who on any particular occasion were not present in court. The civilians were no less Delegates than the other Commissioners; most of the Commissions prior to 1641 were exclusively composed of them.

The words "and whether appointed under the great seal or the half seal" have also been omitted, for this reason—that the Act 25 Henry 8, c. 19, under which the Court was first established, expressly required, in the 4th Section, that a commission of appeal from an ecclesiastical court should be issued under the *great seal*; and, although the records do not always state under what seal the delegates were appointed, no instance has been met with of an appointment described as made under the *half seal*. This being so, it may reasonably be assumed that in all these cases the commission of appeal was issued in the manner prescribed by the Act. The Act 8 Eliz., c. 5—which is entitled an Act "for the avoiding of tedious suits in civil and marine causes," and provides that in all such causes the decision of the Delegates shall be final and definitive—says that the appointment of the Delegates shall be "by commission under the half seal, as it hath heretofore been used in such cases;" but notwithstanding this no instance has been found of the use in such causes of any other seal than the great seal. It has been suggested to me that the term "half seal" denotes a particular way of using the great seal, as in writs for the election of Members of the House of Commons, in sealing which, I am informed, only a portion of the



seal is impressed upon the wax appended to the writ. The seals attached to the Delegates' commissions are, however, too much broken and defaced to admit of its being ascertained how the seal was used.

(6.)—*The Nature of the Sentence, or whether the Cause was otherwise settled or abandoned.*

Under this head the nature of the sentence has been briefly stated, any further particulars being reserved for the column of Observations.

The large number of appeals which seem to have been abandoned or discontinued was no doubt owing to the peculiar facilities for protracting the litigation which the nature of the procedure offered.

(7.)—*The Date of the Sentence.*

In any case which was settled or agreed between the parties, the date of the settlement has also been given in this column, whenever it could be ascertained.

(8.)—*Observations.*

This column did not form one of the prescribed heads of the Return, and the insertion of it may possibly appear to be rather supererogatory. But, in making the necessary examination of the records for the purpose of filling up the other columns, a great deal of matter presented itself, which, although not strictly perhaps within the scope of the Return, seemed worthy to be preserved, either for its intrinsic interest, or at least as serving to illustrate the proceedings in a court the published records of which are very few. And as the information so obtained could not be included in the Return as originally framed, without unduly encumbering its columns, it was thought desirable to add a separate column containing, so far as might be, a brief, although necessarily very imperfect, sketch of the proceedings in each cause from its institution in the Court of First Instance to its final adjudication or settlement. Generally speaking, the processes and other records of the Court have supplied what seemed to be required for this purpose, but some further particulars have occasionally been gathered from the published ecclesiastical law reports in such cases as are reported in them. Reference has also been made to the common law reports in some appeals, in which, as not unfrequently happened, the accused party moved for a prohibition to restrain the Ecclesiastical Court from exercising jurisdiction.

I should add that, for more convenient reference, the several Commissions of Appeal and of Review\* have been numbered throughout consecutively, and that both an alphabetical list and a classified index are appended to the Return.

## VI.—SUMMARY OF RESULTS.

It may be well now to state briefly some of the results of the Return.

The total number of causes comprised in the Return is 177; but in 7 of these causes there were *second* appeals after the first appeal had been decided by the Delegates, and the cause had been remitted to the Court below, making in all 184 appeals. In 17 of these appeals, the Court as originally constituted was reformed or strengthened by a commission of adjuncts, and in 6 of the 17 by a *further* Commission, of "Adjuncts super Adjuncts." Again, in 7 causes after sentence had been given by the Delegates, a Commission of Review was granted for the rehearing of the appeal. There was also one Commission of Review (No. 34) for the rehearing of a case which had been previously heard, not by the Court of Delegates, but by a Court of High Commission; and one other case in which a special or original Commission was issued by the Crown as visitor of the Chapel Royal, Windsor (No. 93), and not by way of appeal or revision from any Court.

Briefly, then, the numbers stand thus:

Causes of Appeal	-	-	-	-	-	177
Second Appeals in above Causes	-	-	-	-	-	7
<b>TOTAL Number of Commissions of Appeal</b>						<b>184</b>
Commissions of Adjuncts	-	-	-	-	-	17
Ditto of Adjuncts super Adjuncts	-	-	-	-	-	6

\* The Commissions of Adjuncts, being merely for the purpose of adding other Delegates to the Court in a pending Appeal, have not been separately numbered.

Commissions of Review from Delegates	-	-	-	-	-	7
Ditto from High Com-	-	-	-	-	-	
mission Court	-	-	-	-	-	1
Special or original Commission	-	-	-	-	-	1
<b>TOTAL Number of Commissions</b>						<b>216</b>

In the Appendix will be found four Tables, showing—

- I. The various Courts appealed from, and the number of Appeals from each.
- II. The number of each description of Causes appealed, whether for correction of Clerks or of Laymen, or Suits against Churchwardens, or other Causes.
- III. The Composition of the Court under *all* the Commissions comprised in the Return.
- IV. The Composition of the Court under those Commissions *only* which were issued in Causes for the Correction of Clerks.

It will be seen that in the last three Tables the whole period covered by the Return has been subdivided into *six* periods ending respectively with the decease of Elizabeth; the abolition in 1641 of the Ecclesiastical jurisdiction; the Revolution of 1688; the accession of the House of Hanover; the middle of the 18th century; and the abolition of the Court of Delegates. These subdivisions, which do not correspond with those in the Return itself, have been adopted in these Tables, because they seem, speaking generally, to mark successive stages in the gradual change which, at least from the time of the Commonwealth, the composition of the Court underwent, until at length the spiritual or ecclesiastical element, except so far as it might be represented by the civilians, was altogether eliminated.

In regard to the composition of the Court some points should be noticed.

The single Commission which during the first period comprised any others than bishops or other ecclesiastics and civilians, was issued in a cause of *duplex querela* (Appeal No. 1).

In the second period the *two* cases in which the Court was composed exclusively of bishops seem to have been Benefice Causes (Nos. 30 and 33). During the same period there are *four* instances in which Common Law Judges appear in a Commission, *twice* with civilians only, *twice* with the addition of bishops. The earliest of these four Commissions was issued in 1610–11, for the trial of an appeal by a Vicar Choral from a sentence of deprivation (No. 15). It was composed of judges and civilians only; but the Commission of Review in the same case (No. 16) contained both bishops and civilians, without, it would seem, any Common Law Judges. The other case in which judges are found alone with civilians, was a cause of correction for "perturbation of seat" (No. 36–37). Here the original commission was composed of civilians only; the judges were added in the Commission of Review. Of the two cases prior to 1640 in which the Court comprised judges with bishops and civilians, one would seem to have been a Benefice Cause (No. 32); the other was a suit for deprivation of a clerk in holy orders who had been convicted of manslaughter (No. 23). In the latter case the Commission of Appeal was addressed to civilians only; the bishops and judges were added by a Commission of Adjuncts.

No Commission in the Return was composed of bishops and civilians only, after 1678 (No. 68), with the exception of a Special Commission appointed by the Crown as visitor in 1689 (No. 93). None was composed of civilians only after 1703 (No. 115); none of bishops, judges, and civilians after 1731 (No. 148); and no Commission contained any bishops after 1750, in which year the two most recent appeals in causes of correction for recusancy or not attending church (Nos. 165–6), came before the Delegates.

Before the Revolution there were only *two* cases in which any peer was on a Commission, in the years 1586 and 1682 (Nos. 1 and 78). Thenceforward until the accession of George I. there were only *three* more, but but from 1714 to 1749 peers were frequently included, and generally with an equal number of bishops. From 1749 onwards there is no instance in the Return of any Delegates' Appeal, properly so called, in which either peers or bishops were in Commission.\* The case of

\* On an Appeal in 1754 from the Prerogative Court a petition was preferred to the Lord Chancellor on the part of the principal Respondent, for a "full" Commission of Delegates (*i.e.*, including Lords Spiritual and Temporal), and a cross-petition praying that the Commission might issue to Common Law Judges and Civilians only. Lord Chancellor Hardwicke is reported to have said:—"It is in the discretion of this Court whether they will grant a Commission of Delegates to Judges of the Common Law and Civilians, or to them and the Lords Spiritual and Temporal. I have granted a full Commission where the juris-



*Bowerbank v. Bishop of Jamaica* (No. 193) in 1838, is altogether exceptional, and perhaps ought not to have been included in this Return. It should be observed, however, that these statements are confined to the cases contained in the Return; in other cases, not of doctrine or of discipline, bishops were occasionally on Commissions of Appeal until 1781,\* and even so late as 1798 the then Bishop of London was named as one of the Delegates on a Commission of Review, and was present as such on the 20th November 1799, when the Court pronounced its decree.†

Without attempting any minute analysis of the Return, it may be well to observe how the Court of Delegates was composed in the very few cases, apparently not more than seven, which can be shown to have even remotely involved any question of doctrine.

The first case of the kind, *Woodward v. Atwood and others* (No. 48), was a cause of correction against a clerk in holy orders for blasphemous speeches against the orthodox faith. The Commission of Appeal issued in 1663; it comprised four bishops, four common law judges and six civilians, and in 1666 there were added, by a Commission of Adjuncts, one bishop, one judge, and one Master in Chancery. Sentence was pronounced by one bishop, two judges, and five civilians.

The second case, *Hart v. Carey* (No. 58), was rather one of non-conformity to ceremonial than of doctrine. Hart was charged with immorality and disaffection to the Church of England, and the latter charge seems to have been supported or explained by the fact that in another suit in the Consistory Court of Peterborough he had been suspended for not conforming to the rites of the Church of England, e.g., by not baptizing with the sign of the Cross. The Commission of Appeal, issued in February 1668-9, comprised four bishops, four common law judges, and three civilians. The proceedings were discontinued.

In the next case, *Salter v. Davies* (No. 97), which came before the Delegates in 1691-2, Davies was charged, amongst other offences not doctrinal, with preaching in favour of Popery. The Commission of Appeal was addressed to three bishops, three common law judges, and five civilians. The proceedings were discontinued.

In the fourth case, *Jones v. Pusey and Shury* (No. 118), where Jones had been presented, amongst other things, for speaking against the Book of Common Prayer, the Commission of Appeal, issued in 1704, was composed of bishops, judges, and civilians in exactly the same numbers and proportions as in that of *Salter v. Davies*. Sentence was pronounced by two of the bishops, the three common law judges, and four of the civilians.

The fifth case, *Pelling v. Bettesworth*, or *Pelling v. Whiston* (No. 132), is the famous prosecution of Whiston for heresy. Here the Commission of Appeal, issued in 1713, was addressed to five bishops, three common law judges, and five doctors of law or civilians; and in 1715 three more bishops and two more judges were added by a Commission of Adjuncts. The proceedings were ultimately discontinued, but a decree was pronounced on the grievance by all the members of the original Commission, except one of the bishops.

The next case, *Peirson v. Gell* (No. 171), only very indirectly, if at all, can be said to have involved any question of doctrine. It was a suit instituted in 1759 against the churchwardens of St. Margaret's, Westminster, for having set up painted glass in the great eastern window of the parish church, representing, as was alleged, "superstitious pictures or images." The Commission was addressed to three judges and five civilians. The case was discontinued, but a decree was pronounced on the grievance by one judge and three civilians.

The seventh and most recent case (No. 173) is that of *Havard v. Evanson*, who was charged with having written a pamphlet impugning the Creeds and Articles of religion. The Commission, which was issued in 1775, comprised three common law judges and five civilians, but not any bishops. An incidental decree was pronounced by one of the judges and four civilians, after which the appeal was abandoned.

"diction of Bishops is in controversy, or any question is depending that concerns the Canon and Ecclesiastical Law. The principal intention in granting a full Commission is, where legal and ecclesiastical matters come in question, and in order to balance the objection to one law more than to the other; and to obviate this, the Judges in both were appointed. The present matter is upon the point of a Will, and altogether a question of law, and therefore I shall dismiss the petition of the party appellate, and according to the prayer of the cross-petition, direct a Commission of Delegates to Judges and Civilians only." 3 *Atk.* 798. But the rule so laid down seems not to have been adhered to by subsequent Chancellors.

\* *Harford v. Morris*, a Matrimonial Appeal.

† *Matthews v. Warner*, a Testamentary Suit.

It would appear, then, that out of seven appeals which more or less involved questions of doctrine, there was not in the five earlier cases, ranging from 1663 to 1715, any material variation in the composition of the Court, which seems to have consisted, in almost equal proportions, of bishops and common law judges, in addition to doctors of laws or civilians. In the two latest cases, however, one of which was directly and wholly, the other only indirectly, if at all, a case of doctrine, the Court was composed exclusively of common law judges and civilians, bishops and other ecclesiastics being altogether omitted.

It will be observed that all these doctrinal cases were subsequent to the Restoration. No such appeal of an earlier date has been discovered. Probably, until the abolition of the High Commission Court in 1641, advantage was taken of the far more summary procedure of that Court for the trial of charges of heresy. But considering the scanty materials from which the earlier periods of the return have been compiled, the fact that no instance has been found of an appeal to the Delegates in a doctrinal case prior to the year 1660, can hardly be taken as a sufficient proof that no such cases came before the Court.

#### CONCLUSION.

In conclusion I should state that, when the records first came into my custody, rather more than 14 years since, they were in the utmost confusion and were fast going to decay. Soon afterwards I caused the most valuable portion of them, namely, the Processes, consisting of 736 volumes, many of which were in a very dilapidated condition, to be bound, in order to preserve them from further injury. And in the course of preparing this Return, the rest of the documents have been brought into some sort of order. But much yet remains to be done; and considering that these documents are almost the only extant records of the Supreme Court of Appeal in Admiralty as well as in Ecclesiastical Causes, it may be a question whether it might not be worth while that they should be completely re-arranged, and rendered available for reference; but this would necessarily be attended with some expense. It should be observed, however, that at present the records of the sixteenth century are almost entirely wanting, and that even in later times there are occasional blanks for several years together. Every effort has been made to find the missing documents, but without success; and should any person who may read this Introduction be able to give information on the subject, he is requested to communicate with the writer.

I would add that the Return as it stands represents very inadequately the labour involved in its preparation, which may be said to have been often in an inverse ratio to the result obtained. The difficulty of deciphering MSS., which are many of them more than two centuries old, and some in a very mutilated condition, is of itself no slight one. Here it has been increased by the peculiarity of the Law Latin in which the records of the Court were for the most part kept during the first 200 years of its existence, and which is frequently rendered yet more obscure by the crabbed character of the writing, and by constant abbreviations.

It is right that I should state that in the preparation of the work I have received very great assistance from Mr. Henry Goldsmith, a gentleman who was recommended to me by the Deputy Keeper of the Records, to assist in deciphering the older documents. And above all am I indebted to Mr. John George Smith, barrister-at-law, who is now in this office, and to whom any credit that the work may deserve is chiefly due. Without his able assistance and unwearied attention, the Return would never have been issued in so complete a form as it is.

H. C. ROTHERY,  
H. M.'s Registrar.  
Appeal Registry,  
Doctors' Commons,  
28th March 1868.

#### APPENDIX to the INTRODUCTION.

##### NOTE (1).—OF APPEALS FROM THE ADMIRALTY AND OTHER COURTS TO THE DELEGATES.

How long the High Court of Delegates had existed as the court of appeal from the Admiral's Court does not appear, but there can be little doubt that it dates from a very early period.



The Admiral's Court, or, in other words, the Court of the Lord High Admiral, now called the High Court of Admiralty of England, long exercised both an original and an appellate jurisdiction. In its appellate character it entertained appeals from all the Vice Admiralty Courts, which formerly existed in the maritime counties of England, and from those more recently established in the Colonies, as well as from the Admiralty Courts in Ireland. That it was a court of appeal from the Admiralty Courts in Ireland appears both from the records of the High Court of Admiralty, and from the opinion of Sir Leoline Jenkins, in a very interesting case given in his life by Dr. Wynne, vol. ii., p. 787. But in the year 1782, the Act 6 Geo. 1, c. 5 (1719), which had declared the dependent and subordinate position of Ireland, and its judicial tribunals, was repealed by the 22 Geo. 3, c. 53, and in the following year an Act of the Irish Legislature was passed (the 23 & 24 Geo. 3, c. 14) for regulating the High Court of Admiralty of Ireland, whereby it was provided that all appeals from that Court should lie to the Court of Delegates in Ireland.

On the other hand, the Court of the Cinque Ports, not being a Vice Admiralty Court, seems to have been exempt from the Lord High Admiral's jurisdiction; but whether an appeal lay to the King (*i.e.*, to the High Court of Delegates), or to the Lord Warden of the Cinque Ports, was at one time questioned. The question was, in the year 1675, referred by King Charles II. to Sir Leoline Jenkins, Judge of the High Court of Admiralty, and Sir Robert Wiseman, who had been temporarily appointed to that office during Sir Leoline's absence on embassy to Nimeguen; and both those judges seem to have been of opinion that a judgment of the Court of the Cinque Ports could only be reviewed by the Lord Warden or by Delegates appointed by him. See their joint opinion in Dr. Wynne's Life of Sir Leoline Jenkins, vol. ii., p. 782. The case subsequently came before the Court of King's Bench, but no decision was come to, the cause having been agreed. Vide *Stock v. Cullen*, Jones' Reports, p. 66. At the same time the existing Delegates' Records contain some instances, about *six* in all, of appeals brought directly from the Cinque Ports to the Delegates, the earliest in the year 1629, the latest in 1829. Other courts also there were that appear to have been exempt from the Lord High Admiral's jurisdiction, but from which there was no doubt an appeal direct to the Court of Delegates. Some of these courts are mentioned in s. 24 of the 1 & 2 Geo. 4, c. 75.

It may be added that the High Court of Delegates appears to have been also the court of appeal from the Earl Marshal's Military Court, or Court of Chivalry, which, like the maritime courts, was governed by the principles and procedure of the civil law. Of appeals from this court, which has long ago fallen into desuetude, there are in the extant records of the Delegates *seven* instances only, of various dates from 1625 to 1739. The commissions appointing the Delegates, as in Admiralty and Ecclesiastical causes, seem to have been issued under the Great Seal on appeal to the King in Chancery.

#### NOTE (2).—OF THE HIGH COURT OF DELEGATES IN IRELAND.

The Irish "Act of Appeales," the 28 Hen. 8, c. 6. (1537), which, like the corresponding Act for England, abolished the practice of appealing to the "Bishop of Rome," gave instead thereof the right of appeal either to the King in his Court of Chancery in England, or to his "lieutenant, deputy, justice, or other governour" in the Court of Chancery in Ireland. In the former case, the "Commission or Delegacy" was to be granted "to some discreet and well learned persons of the land of Ireland, or else in the realm of England." In the latter case, they were to be of Ireland only. They were to have like "power and authority in all manner of things as Commissioners assigned in appeales made to the King's Highness in the realm of England," but the Chancellor of Ireland could grant such a Commission only "by the assent of the Chief Justices of the King's Bench and Common Place, the Master of the Rolls, and the Under-thesaurer for the time being, or any two of them, so as the said Under-thesaurer be one." During the continuance of this Act, the appeals to the Delegates in England from the Courts of the Archbishops of Armagh and Dublin were very numerous: one is described as brought from the old province of *Tuam*, but none as from *Cashel*; occasionally also appeals\* appear to have been

brought for revision or rehearing from the Delegates in Ireland to the Delegates in this country: several others are described in the Repertory Book simply as from "Ireland" without any court being specified.

In the year 1788, the Act 28 Hen. 8, c. 6, was repealed by the (Irish) Act 28 Geo. 3, c. 32, which provided that all appeals from the Archbishop's Courts in Ireland should be to the King in his Court of Chancery in that kingdom; in other words, to the Court of Delegates in Ireland. The jurisdiction of this Court was unaffected by the Acts which transferred the powers of the High Court of Delegates in England to the Judicial Committee of the Privy Council, and it still exists as the Supreme Court of Appeal in Ecclesiastical Causes for Ireland.

#### NOTE (3).—OF THE COURTS OF ARCHES AND OF AUDIENCE.

The Court of Arches, as is well known, was at first merely the Court of Appeal from the Archbishop of Canterbury's Thirteen Peculiars in the City of London, and derived its name from Bow Church (Ecclesia B. Mariæ de Arcubus), in which, as the chief of those Peculiars, the Court was held; but in consequence of the Dean of the Arches acting also as the Archbishop's official principal, and holding his Court as such, in the same place as the Court of Arches, the latter came to be regarded as the Court of Appeal from the whole province. [See *Burn's Eccl. Law*, *sub voce* "Arches."]

The Court of Audience seems to have been originally held by the Archbishop of Canterbury in his own palace, for such matters as he thought fit to reserve for his own cognisance. Sir Edward Coke, in his Institutes (Part IV., p. 337), describes it as follows:

"This Court is kept by the Archbishop in his own palace and medleth not with any matter of contentious jurisdiction, but dealeth with matters *pro forma*, as confirmations of bishops' elections, consecrations, and the like, and with matters of a voluntary jurisdiction, as the granting of the guardianship of the spiritualities *sede vacante* of bishops, admission and institution to benefices, dispensing with banns of matrimony, and such-like."

But this description is scarcely borne out by what may be gathered of the Court of Audience from other sources. It seems rather to correspond with Oughton's account of the duties of the Archbishop's Chancellor, or Vicar General, whose office was, he says, formerly held in conjunction with that of the "auditor" of the Court of Audience.—(*Oughton's Ordo Judiciorum*, Prolegomena, p. xv.)

Of the latter court, Oughton says that the Archbishop, being formerly in the habit of determining matter *extra tribunal* in his own palace, committed them, before passing sentence, for examination and hearing, to certain doctors of the civil and canon laws, hence called "Auditors;" that these auditors used to accompany the Archbishop *ubicunque migravit*, whence the Court of Audience was called the Archbishop's Familiar or Domestic Court, but that after a time they had the power not only of hearing but of determining causes, and used to sit as judges in the Consistory Place in St. Paul's Cathedral. Oughton does not state when this removal of the court took place, but probably it was prior to the date of any of the appeals comprised in the following Return.

That the court possessed a contentious jurisdiction even before Coke's time seems clear from the course of appeal prescribed in 1532, by the "Act for the Restraint of Appeals" (24 Hen. 8, c. 12, s. 7), which expressly provided that in testamentary, matrimonial, and tithes causes, an appeal might be made from an archdeacon of the archbishop, or his commissary, to the Court of Arches or Audience. So, too, the preamble of the Act 23 Hen. 8, c. 9, s. 1 (1531), speaks of "great number of the King's subjects" being cited out of the diocese where they dwelt "to appear in the Arches, Audience, and other High Courts of the Archbishops of this realm, . . . to answer . . . suits of defamation, withholding of tithes, and such other like causes and matters." Oughton also describes the two courts as sister or twin courts, and says that the Auditor of the Court of Audience had formerly, *in omnibus et per omnia*, similar jurisdiction with the Dean of the Arches (*Ordo Judiciorum*, vol. I., p. 17), and that both courts were frequented by the same advocates and proctors, and had the same laws and customs. So far as they extend, the records of the Delegates quite agree with this account of the jurisdiction of the Court of Audience, for they show that from the year 1619 to 1641 the appeals from that Court to the Delegates, though less numerous than those from the Court of

\* *E.g. Mason & Mason v. Secome*, in 1698; and *White v. Hill*, a testamentary cause, in 1729.



Arches, were as many as 180, among which were many testamentary and, apparently, some matrimonial causes. See also Note (4).

With the other Ecclesiastical Courts, the Court of Audience was abolished in 1641, and does not appear to have been revived, by name at least, or as a separate court, after the Restoration. Oughton, who acted as Deputy Registrar of the High Court of Delegates from the year 1702 to 1721, says: "Hæc itaque Curia "Audientia Cantuariensis omnino jamdudum exolevit; nisi quatenus ipse (nonnunquam) Archiepiscopus in "Arduis [utpote deponendis episcopis aut similibus] "Audientiam suam celebrat, in propria personâ, et "proprio in palatio, cum auditore speciali, sive auditoribus, ad hoc specialiter constitutis, pro istâ vice, "secum assidentibus" (*Ordo Judiciorum*, vol. I., Prolegomena, p. xvi.) In this passage Oughton seems to identify the Court of Audience with that which the archbishop occasionally held in his own palace after the removal of the Court of Audience to the Consistory Place of St. Paul's. The generalized "utpote deponendis episcopis" evidently refers to the case of Dr. Watson, Bishop of St. David's, who, after trial before the Archbishop of Canterbury, with five bishops as assessors, was deposed for simony in 1699,\* and those of the other Welsh bishops who were tried shortly afterwards on a similar charge. For the trial of Bishop Watson the archbishop sat generally at Lambeth Palace, but also in a variety of other places, such as his chamber at Whitehall, a room in the house at Westminster, called "Le Cockpitt," and the Hall of the College of Advocates at Doctors' Commons.

#### NOTE (4).—OF THE ECCLESIASTICAL COURTS IN 1636-7.

The following account of "the Government of the "Church of England" has been copied verbatim from a MS. in the Public Record Office, dated 24th March 1636-7, and apparently draughted by Sir John Lambe, then Dean of the Arches, whose name occurs very frequently in the Commissions of Delegates of the reign of Charles I.† It does not appear for what purpose it was drawn up, but as an authentic and contemporaneous account, which in all probability has never before been printed, of the Ecclesiastical Courts of that time, it seems to deserve a place here. From the very brief statement which it contains as to the Court of Delegates, it would appear that the civilians were then regarded as the essential and invariable element of the court, bishops and common law judges being only occasionally added, but on what occasions is not stated. Among the courts of the Archbishop of Canterbury no mention is made of the Court of Peculiars.

#### *The Government of the Church of England.*

The King is the supream governor, from whome the execution of all Ecclesiasticall jurisdiction is derived unto

- |                |   |                                                                                   |
|----------------|---|-----------------------------------------------------------------------------------|
| Archbishops of | { | Canterbury who hath Suffragans within his Province, Each of them hath his dioces, |
|                |   | Yorke who hath 3 Suffragans, who also have each his dioces.                       |
2. Bishoppes of the said several dioces.
  3. The High Commission.
  4. The Delegates.

The Archbishop of Canterbury hath 6 Judges or Officers for Causes under him.

1. The Official of the Arches Court.
2. The Judge of the Audience.
3. The Judge of the Prerogative.
4. The Vicar Generall.
5. The Commissary of the Faculties.
6. The Commissary of Canterbury.

The Official principall (so called) of the Arches, heareth and determineth all Causes of Appeales made to him from any of the Bishoppes that are Suffragans to the Archbishop of Canterbury: for any nullitie, injustice, delay or denial of justice, as also made from any of their Chauncellors or Commissaries, or from their Archdeacons or the Officialls of them, and from their severall Deanes and Chapters of their Cathedrall Churches that have any ecclesiasticall jurisdiction *etiam omisso medio* :‡

\* See Appeals Nos. 104-5.

† The MS. is endorsed "Ecclesiall. Courts, the English draught, 24<sup>th</sup> March, 1636. Sr John Lambe." It is summarised in the most recently published volume, edited by John Bruce, Esq., V. P. S. A., of the Calendar of State Papers, Domestic Series, of the reign of Charles I., 1636-7 p. 621.

‡ Meaning, no doubt, without any intermediate Appeal to the Bishop of the Diocese. Many instances will be found in the Return

The said Court of the Arches did heretofore heare and determine any originall suits, called out of any of his suffragans territories; but now by a Statute of 23<sup>d</sup> H. 8. none shall be cited to appear out of the dioces where they dwell, which is the cause that few are called originally into the Court of Arches, unlesse at the request of the Ordinary, but only out of London dioces, who being called to Bow Church that is situate in the dioces of London, are not said to be called out of their dioces where they dwell.

The Judge of the Audience Court doth in all things as the Arches; except in appeales made from the Deane of the Arches (*sic*) to the said Officiall, which is specially reserved to the Officiall to heare and determine.\*

The Judge or Commissary of the Prerogative, proveth the Willes of the deceased, graunteth Administrations of their goods that die intestate, if they have *bona notabilia* in diverse dioces, and graunts administrations, heareth their accounts, and disposeth of the remainder according to the Law.

The Vicar Generall or Chauncellor to the Archbishop confirmeth the election of Bishoppes, instituteth to Benefices, visiteth the Province in the metropolitically visitation, but in all the premisses by the Archbishop's speciall commaund, fiat, or comission first had. The said Vicar Generall taketh care of the jurisdiction of vacant Bishopricks, and graunteth all such Licenses as may passe by Archiepiscopall authoritie.

The Commissary of the Faculties graunteth such dispensations and faculties (by speciall direction from the Archbishop) as formerly the Pope used to do, to which the Archbishop is specially authorised by the statute of 25<sup>o</sup> H. 8, and by the same power graunteth all other licenses and faculties which the Archbishop formerly might do.

The Commissary of Canterbury is the Archbishop's Officer in his owne dioces, and of his owne Consistory at Canterbury, and there doth as the Commissary of other Bishoppes in their dioces so far as he is authorised by his Comission or Patent from the Archbishop.

#### *Of the Bishoppes and their Officers.*

The Bishoppes have each of them a Vicar Generall or Chauncellor for their several dioces, and where the diocese is large they have also one or more Commissaries in several partes of their said dioces, who have jurisdiction according to their Comissions. These Commissaries are called in the Law *Officiales foranei*. The Bishoppes have also one or more Archdeacons under them according to the largeness of their dioces.

The Bishoppes (besides the power of ordaining Preists and Deacons, which are matters of episcopall order) have jurisdiction over their whole dioces and all inhabitants therein.

The Bishop's Chauncellor or Vicar Generall is in matter of jurisdiction *eadem persona cum episcopo suo idem consistorium, idem tribunal, ab eo ad episcopum non appellatur, sed ad superiorem, viz., ad Archiepiscopum in Curia sua de Arcubus aut Audientie predicta*. But from the Archdeacon or his Officiall, the partie grieved may appeal to the Bishop or his said Chauncellor or to the Archbishop *ut supra* at his choice.

This Chauncellor or Vicar Generall hath jurisdiction in such things that belong to the Bishop *eo ipso* that he is Chauncellor, without Patent or Comission, except in such things as by the law do require a speciall mandate, for he hath *nominationem ab episcopo potestatem a jure*.

The Commissary to the Bishop hath onely such power and in such things as are granted to him by the Bishop, for he hath only *comissam potestatem*.

The Archdeacon is called *Oculus Episcopi* and hath some jurisdiction of himself, as to visite his Archdeaconry and there to receive presentments (but he must referre them to the Bishop to be corrected); he may induct those whome the Bishop hath instituted to anyrectory, vicarage, &c.; he may *corrigere in levioribus*: he may see to the repaire of Churches. And if he used for time long enough to raise a prescription, all these belong to him *de jure* and he may do such other things as he used and prescribed to do.

The Archdeacon may have an Officer called his Officiall who may do all that the Archdeacon can do.

In any Cathedrall Church or Episcopal Sea there is a deane and chapter. The Bishop is the head of the deane and chapter, and the deane the head of the chapter. These are the counsaile of the Bishop and ought to be assistant to him upon all lawful occasions. They are to confirme his graunts, leases, offices, &c. The

\* This seems to refer to a time when the Office of Dean of the Arches, as Judge of certain Peculiar Courts, was distinct from that of the Archbishop's Official Principal, and an Appeal lay to the latter from the former.



most deanes and chapters have also jurisdiction such as the Bishoppes have graunted to them or so long suffered them to use as that they can prescribe for it.

Note that in all these offices derived from and under the Bishop, the Bishop cannot so graunt his jurisdiction to his Chauncellor Commissary Archdeacon Deane and Chapter &c., or so abdicate it from himself, but that he also may use the same, not by prohibiting them (unless by way of appeale where it lieth to him) but by doing also with them or without them.

Both Archbishoppes Bishoppes Archdeacons and Deanes and Chapters that have jurisdiction may and by custome ought to have and appoint under his or their several officers a Register, that is a publique Notary, to be *actorum scriba, custos registerii, scriptorum, exhibitorum, munimentorum, &c.*

#### *The High Commission Court.*

This is a Court erected by the Statute of 1<sup>o</sup> Eliz. and hath only such authority as is graunted to the Commissions thereof by the King's Commission or Letters Patents: and was erected for the better repressing of heresies schismes, and errors in Religion: for punishing of great and enormous crimes obstinacies and offences, to assist the ordinaries, where they cannot sufficiently correct or (by the ordinary way of the Law) rule their refractory and exorbitant offenders and offences. They cannot determine nor do not meddle with matters of right and title betweene partie and partie, as of tythes, legacies, validitie of willes, mariages, or matrimoniall contractes, or the like. But as their now commission is, almost all kinde of ecclesiasticall offences, misdemeanours and abuses: laying violent hands on Clerkes, or scandalizing them in their function, sacrilege, clandestine marriages, or misdemeanours in procuring the same, punishment of Papists, Puritans, Sectaries, Anabaptistes or other breakers or disobeiers of the discipline of the Church: husbands that use cruelty to their wives or deny them alimonie, wives that eloigne themselves from their husbands, incests, adulteries; and the like and generally all or most of the crimes or offences that any Ordinary may and must especially if it be heinous, or the offender fugitive or hard to be ruled, or that the Ordinary require the assistance of the Court.

The Archbishoppes, Bishoppes and other Ordinaries do proceed by Citation and if the partie be not found, then by an edict or proclamation comonly called *vis et modis*, and if he appeare not, they suspend or excommunicate him that is contumax therein.

But the High Commission proceed by letters missive in the way of summons; and by Attachment to apprehend the bodie of the offender. Or if he cannot be catcht, then by intimation or publication against him uppon a fine or penaltie if he appeare not at the day appointed. And so *de die in diem*, encreasing the fine with new intimation till he do appeare.

When the partie doth appeare, Articles are giving containing the offences to which the partie is to answer uppon his oath. If he denye the prosecutor must bring in his prooffe, and the other side his defence, and so to final hearing and sentence.

The Archbishoppes Bishoppes and other ecclesiasticall ordinaries proceed by suspension excommunication and the other censures of the Church. But the High Commission may use those and also fine and imprisonment and bond to performe the order of the Court.

When the parties delinquent are apprehended they enter bond for appearance and if they forfeit it, or other their bond the High Commissioners do returne the same as forfeited into the King's Majesties Exchequer.

At the end of each second terme the High Commission have a day of mitigation where the fines and censures imposed may be moderated lessened and discharged, as the submission or reformation of the partie shall appeare. But if they be mitigated and certified into the King's Exchequer they are no further delt with by the Commissioners.

#### *The Delegates Court.*

This Court is erected by the Statute of 25 H. 8, to hear and determine all such Appeales as formerly were wont to be made to Rome. The Appeale is made to (the) King in his Chauncery, thereuppon the Lord Keeper appointeth 4, 5 or 6, of the Doctors of Lawe and sometimes some Bishoppes and some judges of the Comon Lawe who by the King's Commission are to heare and determine the said cause of appeale. Their proceeding is by citation *vis et modis* &c. and their censures as in other the Ecclesiasticall Courts by suspension excommunication &c.

#### NOTE (5).—OF PERSONAL ANSWERS AND CANONICAL PURGATION.

The Act 13 Car. 2, c. 12, in restoring the jurisdiction of the ordinary Ecclesiastical Courts, which had been abolished during the Commonwealth, excepted the High Commission Court, and further, by sect. 4, declared that "it shall not be lawful for any Archbishop, Bishop, Vicar-General, Chancellor, Commissary, or any other spiritual or ecclesiastical judge, officer, or minister, or any other person having or exercising spiritual or ecclesiastical jurisdiction, to tender or administer unto any person whatsoever the oath usually called the Oath *ex-Officio*, or any other oath whereby such person to whom the same is tendered or administered may be charged or compelled to confess, or accuse, or to purge him or herself of any criminal matter or thing whereby he or she may be liable to any censure or punishment; any thing in this statute, or any other law, custom, or usage heretofore to the contrary hereof in any wise notwithstanding."

The letter of this enactment seems to have been so far observed that a clergyman accused of any offence for which he would be liable to deprivation or deposition, and any person accused of simony, usury, or incest, was not bound to answer an oath as to the truth of the charge (*Oughton's Ordo Judiciorum*, vol. I., p. 226); but in the Articles administered to the defendant in a cause of correction, it was the practice to charge not only the commission of the offence, whatever it might be, but also the public "fame," or report of its commission; and to this latter charge it seems that the defendant was bound to answer on oath, and if he failed to do so was treated as having admitted its truth. (*Ordo Judiciorum*, vol. I., p. 219.) In either case, whether he confessed the "fame," or whether its existence were proved against him, even though the offence itself were not, the burden of proving his innocence seems to have been thrown upon him, and he might be required to make "canonical purgation,"—i.e., to declare on oath that he was not guilty of the offence,—and to produce a certain number of witnesses as "compurgators," to swear that they believed his declaration to be true (*Ordo Judiciorum*, vol. I., pp. 221, 223, 226, 230, 232, and see Appeals Nos. 57 and 66). And if he failed in his purgation, he was to be denounced as convicted, and a public penance was to be imposed upon him (*Ordo Judiciorum*, vol. I., p. 223). Moreover, it would appear that a public "fame" or report that a man had committed some scandalous offence, was of itself, and without any charge of its actual commission, a sufficient ground for which he might be presented for correction (*Ordo Judiciorum*, vol. I., p. 228, and Appeals Nos. 71, 72, and 114). Oughton adds, that it had been always practised and adjudged that purgation might be enjoined upon the accused, on the mere presentment of the churchwardens and sidesmen, without any witnesses being produced, and although he denied both the crime and the fame (*Ordo Judiciorum*, vol. I., p. 230). On the other hand, if the promoter in a cause of correction proved neither the crime nor the fame, he was liable to be sued for defamation (*Ordo Judiciorum*, vol. I., p. 235).

The practice of requiring any person convicted of felony in a Temporal Court to make purgation in an Ecclesiastical Court, notwithstanding that on his conviction he had been allowed "benefit of clergy," was abolished by the Act 18 Eliz., c. 7, s. 2, and the discontinuance of the practice seems to have been enforced by prohibitions from the Temporal Courts. (See *Williams v. Serle*, Appeal No. 23.)

TABLE I., showing the NUMBER of APPEALS from each COURT.

	No. of Appeals	TOTAL.
1.—In the PROVINCE of CANTERBURY.		
Court appealed from :		
Archies :		
Number of Causes appealed - - - - -	106	112
Second Appeals in six of the Causes - - - - -	6	
Audience - - - - -		7
Court of Archbishop of Canterbury (so described) :		
Number of Causes appealed - - - - -	5	6
Second Appeal in one Cause - - - - -	1	
Court of Vicar General - - - - -		2
Court of Dean and Chapter of Canterbury during vacancy of See. - - - - -		2
		120



TABLE I.—continued.

	No. of Appeals.	TOTAL.
II.—In the PROVINCE of YORK.		
Court appealed from :		
Consistory Court	22	
Chancery Court	1	
Court of Archbishop of York	3	
Dean and Chapter of York during vacancy of See	1	27
III.—In IRELAND.		
Court appealed from :		
Court of Archbishop of Armagh	2	
Dublin	5	
Consistory of Dublin	4	
Dean and Chapter of Dublin	1	
Prerogative Court, Ireland	1	13
IV.—PECULIARS.		
Court appealed from :		
Court of Dean and Chapter of Westminster	1	
Great Canford and Poole	1	2
V.—Court of Bishop of Jamaica		1
VI.—Uncertain		12
TOTAL		184

Note.—The above Table includes 177 Causes which were appealed, and second Appeals in 7 of those Causes.

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TABLE II., showing the NATURE of the CAUSES comprised in the RETURN.

PERIOD.	Causes of Correction against Clerks.	Causes of Correction against Laymen.	Suits against Churchwardens.	Benefice and other Causes.	TOTALS.
1586-1603	7	3	—	3	13
1603-1640	12	3	—	5	20
1660-1688	21	19	—	2	42
1689-1714	21	11	1*	4	37
1714-1750	13	17	1	2	33
1751-1838	14	8	2	1	25
1586-1838	88	66	4	21	179

\* This suit was instituted against both rector and churchwardens, but not being a cause of correction, is not included in the first column. (See Appeal No. 128.)

Note.—This Table includes 177 Causes of Appeal, one Cause of revision from a High Commission Court (No. 34), and one original proceeding by the Crown as visitor (No. 93).

TABLE III., showing the COMPOSITION of the COURT of DELEGATES in all the COMMISSIONS comprised in the RETURN.

PERIOD.	Of Bishops only.	Of Civilians only.	Of Bishops and Civilians.	Of Peers and Civilians.	Of Bishops, Judges, and Civilians.	Of Peers, Bishops, Judges, and Civilians.	Of Judges and Civilians.	Of Peers, Judges, and Civilians.	TOTALS.
1586-1603	—	10	2	1	—	—	—	—	13
1604-1640	2	23	4	—	2	—	2	—	33
1660-1688	—	11	2	—	13	1	19	—	51
1689-1714	—	1	1	—	26	3	13	—	44
1714-1750	—	—	—	—	8	20	19	—	47
1751-1838	—	—	—	—	—	—	27	1	28
1586-1838	2	45	9	1	54	24	80	1	216

Note.—In this and in the following Table the numbers in the several columns denote the number of Commissions of all kinds, whether Commissions of Appeal, of Adjuncts, or of Review, in each period, which were composed as described at the head of the column. For the number of Commissions of each kind, see ante p. 127.

TABLE IV., showing the COMPOSITION of the COURT of DELEGATES in all the COMMISSIONS comprised in the RETURN which were issued in CAUSES of CORRECTION of CLERKS.

PERIOD.	Of Civilians only.	Of Bishops and Civilians.	Of Bishops, Judges, and Civilians.	Of Peers, Bishops, Judges and Civilians.	Of Judges and Civilians.	Of Peers, Judges, and Civilians.	TOTAL.	
1586-1603	6 <sup>a</sup>	1 <sup>a</sup>	—	—	—	—	7	1586-1603. <sup>a</sup> As to <i>three</i> of the Commissions in this period to civilians only, and the <i>single</i> Commission to bishops and civilians, it is not clear that the causes in which they were issued were Causes of Correction. (See Return Nos. 2, 3, 6, 12).
1604-1640	10 <sup>b</sup>	2	1 <sup>c</sup>	—	1 <sup>d</sup>	—	14	1604-1640. <sup>b</sup> So also as to <i>two</i> of the Commissions to civilians during this period. (See Return Nos. 42, 45). <sup>c</sup> A Commission of Adjuncts (No. 23). <sup>d</sup> No. 15.
1660-1688	4	2	14 <sup>e</sup>	—	7	—	27	1660-1668. <sup>e</sup> <i>Three</i> of these 14 Commissions were issued in Cases of Doctrine, viz.:— <i>Two</i> in <i>Woodward v. Atwood, &amp;c.</i> (No. 48). <i>One</i> in <i>Hart v. Carey</i> (No. 58).
1689-1714	—	1 <sup>f</sup>	19 <sup>g</sup>	2	4	—	26	1689-1714. <sup>f</sup> A special Commission (No. 93). <sup>g</sup> <i>Three</i> of these 19 Commissions were in Cases of Doctrine, viz.:— <i>One</i> in <i>Salter v. Davies</i> (No. 97). <i>One</i> in <i>Jones v. Pusey and Shury</i> (No. 118). <i>One</i> in <i>Pelling v. Bettsworth</i> (No. 132).
1714-1750	—	—	6 <sup>h</sup>	6	6	—	18	1714-1750. <sup>h</sup> <i>One</i> of these 6 Commissions was a Commission of Adjuncts in <i>Pelling v. Bettsworth</i> (No. 132).
1751-1838	—	—	—	—	16 <sup>i</sup>	1 <sup>k</sup>	17	1751-1838. <sup>i</sup> <i>Two</i> of these 16 Commissions were in Cases of Doctrine, viz.:— <i>One</i> in <i>Peirson v. Gell</i> (No. 171). <i>One</i> in <i>Harard v. Evanson</i> (No. 173). <sup>k</sup> In <i>Bowerbank v. Bishop of Jamaica</i> (No. 183), but this was not strictly a Delegates' Appeal.
1586-1838	20	6	40	8	31	1	109	

Note.—The number of Causes of Correction of Clerks was only 88 (see Table II.), but in these Causes there were issued 21 Commissions of Adjuncts or of Review making 109 Commissions in all.



## HISTORICAL APPENDIX (X.).

The Special and General Reports of the Ecclesiastical Courts  
Commission of 1830-2.

NOTE.—The Special Report is here printed *in extenso*; the General Report is abbreviated by the omission of the paragraphs which relate to Wills, Church Rates, and other matters foreign to the present inquiry.

## SPECIAL REPORT.

YOUR MAJESTY having been pleased to issue two Commissions under the Great Seal, authorising and directing the Commissioners therein named to make a diligent and full "Inquiry into the course of Proceeding in Suits and "other Matters instituted or carried on in the Ecclesiastical "Courts of *England* and *Waies*, from the first process "and commencement to the termination thereof, and into "the Process, Practice, Pleading, and other things connected therewith; and to inquire whether any and what "parts thereof may be conveniently and beneficially "discontinued or altered, and what (if any) alterations "may be beneficially made therein, and how the same "may be best carried into effect; and further to inquire into the Jurisdiction of such Courts, and whether "such Jurisdiction may in any and what respects, and in "any and what cases, be conveniently and beneficially "taken away or altered;"

We, YOUR MAJESTY'S Commissioners, whose hands and seals are hereunto set, do humbly certify to YOUR MAJESTY, that, in obedience to YOUR MAJESTY'S Commands, We have proceeded to inquire into and consider the several subjects embraced by YOUR MAJESTY'S Commissions. And having been required, by a communication from the Lord Chancellor, under the date of the 12th of January instant, to report specially and immediately "on the Jurisdiction of the Court of Delegates, and the expediency of "transferring that Jurisdiction to the Privy Council,"—

We beg leave, in the first place, to submit to YOUR MAJESTY the opinion which we have before communicated to the Lord Chancellor upon the subject, in answer to a question then proposed to us; viz., "that it would be "expedient to abolish the Jurisdiction hitherto exercised "by Judges Delegate, and to transfer the right of hearing Appeals to the Privy Council; provided that, in "order to render that Tribunal efficient for such Purpose, "a sufficient number of days for the sitting of the Privy "Council be fixed, and some arrangement made for the "attendance of Privy Counsellors conversant with Legal "principles; and further, that the present proceedings for "a Commission of Review ought to be abolished."

Such being the opinion which we have formed, We propose to confine our present Report to the statement of the several grounds and reasons upon which it rests.

The formation of the COURT OF DELEGATES, as a Court of ultimate Appeal in Ecclesiastical Causes, under the Statute passed in the 25th year of King Henry the Eighth\*, in lieu of the ancient form of Appeal to Rome, may be well suited to effect the object of keeping the administration of the Ecclesiastical Laws in due observance of the Common Law of the Realm:—But it presents anomalies, which have been pointed out by all the Witnesses who have been examined by us on this head of Inquiry, and which appear to have been always considered as defects, and were made the subject of representation to the Crown in Petitions†, for their amendment, in the Reign of Charles the Second, though without effect.

THE COURT is constituted for each separate Case, by Commission under the Great Seal, to certain persons delegated thereby to hear and determine the particular Cause. In ordinary cases, the Delegates are three Puisne Judges, one from each Court of Common Law, and three or more Civilians; but in special cases a fuller Commission is sometimes issued, consisting of Spiritual and Temporal Peers, Judges of the Common Law, and Civilians, usually three of each description.

In case of the Court being equally divided, or no Common-Law Judge forming part of the majority, a *Commission*

of *Adjuncts* issues, appointing additional Judges of the same description.

The decision of the Court of Delegates is final, no further Appeal lying as matter of right; but a Petition may be presented to YOUR MAJESTY in Council, for a *Commission of Review*. This Petition is referred to the Lord Chancellor, who, after hearing Counsel on both sides, advises Your Majesty thereon.

On this description of the constitution of the Court of Delegates, we feel bound to observe, that a Special Commission being required in each case, some additional expense and delay are thereby incurred. The Judges in each case being different, the uniformity of decision is not so well preserved; and it not being the practice of the Court to deliver or explain the grounds of its judgments, the principles on which they are founded are not sufficiently ascertained.

With respect to the Common-Law Judges, notwithstanding their great learning and experience in the Law of their own Courts, and the great attention and diligence with which they have always discharged their duties, they must occasionally, perhaps not unfrequently, rely for the Law of the Ecclesiastical Court on the Civilian Condelegates; who, in consequence of the Principal Advocates being chiefly engaged as Counsel, are often Junior Advocates, and are thus frequently appointed to act as Judges of Appeal before they have had any considerable practice or experience in their profession.

The system of appointing Advocates to act as Judges is liable, perhaps, to a still more general objection in principle; namely, that being Advocates, their opinions and judgment upon the case before them may be in some degree biassed, however unintentionally, by the bearing which the decision may have upon similar causes in which they may be then engaged as Counsel. The division of opinion of a Court so constituted being known, becomes a ground of dissatisfaction to suitors, and encourages applications for Commissions of Review. Commissions of Adjuncts, if necessary, and Commissions of Review, if granted are attended with the expenses and delay of Rehearing, and must be productive of great inconvenience.

There being no permanent Court, but each Commission being limited to the particular case, no general orders and regulations can be made for expediting the course of proceeding, or establishing rules of practice.

These reasons which may possibly be further elucidated in our General Report, by considerations growing out of the matters there to be discussed, have induced us to think that the constitution of such a Court is essentially defective: and though we might have found difficulty in proposing an unobjectionable substitute, if our attention had not been directed to the expediency of removing the Jurisdiction to the Privy Council, we have no hesitation in assenting to that proposition, subject to the adoption of such suitable regulations and provisions as we have before suggested for rendering that Tribunal efficient for such purpose.

It appears to us, that an Appeal to the Privy Council would not be attended with the objections and inconveniences above enumerated.

THE PRIVY COUNCIL, being composed of Lords Spiritual and Temporal, the Judges in Equity, the Chiefs of the Common-Law Courts, the Judges of the Civil-Law Courts, and other persons of legal education and habits, who have filled Judicial situations, seems to comprise the materials of a most perfect Tribunal for deciding the Appeals in question: and although it would be premature at the present moment to lay down any certain or inflexible rule, by which the Constitution of such Court should be governed in the appointment of its members, yet it may well be observed, that the union in one Court of

\* 25 Hen. VIII. c. 19.

† The suggestion then proposed was, that certain Civilians might be appointed, with salaries, to act with the Judges of the Common Law. See Sir L. Jenkins' Life, 2 vols., p. 695.



Appeal, of a Judge in a Court of Equity, a Judge of one of the Courts of Common Law, and a Judge of one of the Courts of Civil Law, whilst it follows the principle on which the present Court of Delegates is constituted, avoids, at the same time, many of the inconveniences above pointed out, and brings with it the promise of many advantages peculiar to itself.

It is further to be observed, that this Tribunal is always in existence, and does not require a Special Commission in each case, but only a general authority, similar to that given for the hearing of Appeals in Prize Causes.

It is usual at the Privy Council for the presiding Law Lord to deliver the grounds of the judgment; which, being thus known and reported, tend to settle Principles, and to establish uniformity of decision.

The necessity of applying for Commissions of Adjuncts, or of Review, would no longer exist; as any doubt felt by the Court might either be removed by conferring with other Members of the Board, not present at the hearing, or at the utmost by a Rehearing.

No new arrangement of Registrars, or other Officers, would be necessary: the Appeals would be prosecuted in the same manner as Prize Appeals. The Registry of the Delegates and of Prize Appeals, is already one and the same; and the subordinate proceedings, preparatory to the hearing, would be conducted by Surrogates, as in Prize Appeals.

The exercise of this jurisdiction by the Privy Council would be no anomaly, for in Testamentary and other Ecclesiastical matters arising in the Colonies, the ultimate appeal is to YOUR MAJESTY in Council.

The number of Appeals is not likely to be onerous, since the whole number from both the Provinces to the Delegates, for the last Thirty Years have been only ninety-five, which gives an average of little more than Three in the year\*; and although, from the great increase of Personal Property, the number, of late years, has rather increased, yet, taking

the average of the last Ten Years, they do not quite amount to Four in the year; while, from the greater expedition in the hearing, and more uniformity in decision, it may be hoped that the number would rather be diminished than increased: more especially if, by regulations which might be found expedient, checks could be given to Appeals from *grievances* in intermediate steps in the cause, and still, more so, if decisions upon questions of fact should be rendered more satisfactory and conclusive, most Appeals being rather upon the facts of the case, than upon any point of law.

The Court of Privy Council being always in existence would have the power of making orders and regulations for expediting Causes, and for correcting any inconveniences in the course of proceedings and of practice.

WE humbly submit this our Special Report on the Jurisdiction of the Delegates to YOUR MAJESTY'S Royal Consideration.

W. CANTUAR.	(L.S.)
C. J. LONDON.	(L.S.)
W. DUNELM.	(L.S.)
W. ST. ASAPH.	(L.S.)
TENTERDEN.	(L.S.)
N. C. TINDAL.	(L.S.)
W. ALEXANDER.	(L.S.)
JOHN NICHOLL.	(L.S.)
CHRISTOPHER ROBINSON.	(L.S.)
HERBERT JENNER.	(L.S.)
C. E. CARRINGTON.	(L.S.)
STEPHEN LUSHINGTON.	(L.S.)
R. CUTLER FERGUSSON.	(L.S.)

Dated this  
25th day of January 1831. {

Received the 31st day of January 1831.

BROUGHAM, C.

\* See General Report, Appendix (C.) Part I. (Not here printed.)

## GENERAL REPORT.

Præsertim  
of Com-  
mission.

YOUR MAJESTY having been pleased to issue Two COMMISSIONS under the Great Seal, authorising and directing the Commissioners therein named, to make a "diligent" and full Inquiry into the course of Proceeding in Suits "and other matters, instituted or carried on in the Ecclesiastical Courts of England and Wales, from the first process and commencement to the termination thereof; and into the Process, Practice, Pleading, and other things connected therewith; and to inquire whether any and what parts thereof may be conveniently and beneficially discontinued or altered, and what (if any) alterations may be beneficially made therein, and how the same may be best carried into effect; and further, to inquire into the Jurisdiction of such Courts, and whether such Jurisdiction may in any way and what respects, and in any and what cases, be conveniently and beneficially taken away or altered."

We, YOUR MAJESTY'S Commissioners, whose Hands and Seals are hereunto set, Do humbly certify to Your Majesty, That in obedience to Your Majesty's Commands, we have proceeded to inquire into and consider the several subjects embraced by Your Majesty's Commissions.

We commenced the discharge of our duty, by addressing Interrogatories to all Chancellors, Commissaries, Officials, and other Ecclesiastical Judges, and to persons officiating for them; and to the Registrars of all Ecclesiastical Courts.\*

We have also from time to time procured Returns, upon various points, as they became necessary for us in the progress of our deliberations; and we have examined Professional persons, conversant with the Principles and Practice of the ECCLESIASTICAL COURTS, and of the COURTS OF COMMON LAW, with a view to their affording us the requisite information, and bringing to our notice any grievances or defects, or proposing any improvements or amendments, which their experience might enable them to suggest.\*

IN order to elucidate the general subject of our investigations, we will advert briefly to the origin and character of the Ecclesiastical Laws administered in this Country, and the establishment of the Ecclesiastical Tribunals; and we

will describe, summarily, the several Courts, the Matters of Jurisdiction, and the Modes of Proceeding, which belong to this System of Law.

THE Ecclesiastical Laws of this Country have been, for the most part, derived originally from the authority exercised by the Roman Pontiffs, in the different States and Kingdoms of Europe.

Spelman mentions the adoption of the Decrees and Canons of the Church of Rome, as they then existed, by the Clergy and people of England, so early as the year 605, soon after the establishment of Christianity in this country; and there were Ecclesiastical Councils in England, and Canons passed therein, before the Conquest.

From the middle of the twelfth Century, a system of Laws, under the influence of successive Popes, has been compiled and promulgated at different periods. This system has been generally diffused throughout Europe, and prevails with more or less authority in different Countries under the Title of the *Canon Law*.

About the year 1150, that part which is called the *Decretum* was collected by Gratian the Monk, out of the Fathers, Doctors, and Councils.

In the next century, Pope Gregory IX. published five books of *Decretals*, collected from the Decretal Epistles of the Popes; to which Boniface VIII. added a sixth book, about the end of the same century. The *Clementine Constitutions* were next compiled by Clement V. and published by his successor John XXI., at Avignon in 1317, who afterwards collected some further Constitutions which were published after his death about the year 1340.

A seventh Book of *Decretals*, and a Book of *Institutes*, were added by Gregory XIII., under whose sanction the *Corpus Juris Canonici*, containing all the above several parts was published in 1580.

The Pontifical Law, so promulged, says an eminent writer on the Law of Scotland, "extended to all persons" and things belonging to the Roman Church, and separate from the Laity; to all things relating to Pious Uses; to the Guardianship of Orphans; the Wills of Defuncts; and matters of Marriage and Divorce; all which were exempted from the civil authority of the Sovereigns, who were devoted to the See of Rome. So deeply has this Law been rooted, that even where the

History  
the Juris-  
diction.

\* See the Appendix. (Not here printed.)



"Pope's authority has been rejected, yet consideration has been had to these Laws, not only as those by which Church Benefices have been erected and ordered, but as likewise containing many equitable and profitable Laws, which, because of their weighty matter, and their being received, may more fitly be retained than rejected."\*

In England, however, the authority of the Canon Law was at all times much restricted, being considered, in many points, repugnant to the Law of England, or incompatible with the Jurisdiction of the Courts of Common Law; so much of it as has been received, having obtained by virtual adoption, has been for many centuries accommodated by our own Lawyers to the Local habits and customs of the Country; and the Ecclesiastical Laws may be now described, in the language of our Statutes, as "Laws which the people have taken at their free liberty, by their own consent, to be used amongst them, and not as Laws of any Foreign Prince, Potentate, or Prelate."†

In addition to these authorities of *Foreign origin*, must be enumerated also the *Constitutions* passed in this Country by the Pope's Legates, Otho and Othobon, and the Archbishop's and Bishops of England, assembled in National Councils, in 1237 and 1269; and a further body of *Constitutions*, framed in Provincial Synods, under the authority of successive Archbishops of Canterbury, from Stephen Langton, 1222, to Archbishop Chicheley, in 1414; and adopted also by the Province of York, in the reign of Henry VI.‡

These *English Constitutions*, as they may be termed, have been illustrated by the Commentaries of English Canonists of distinguished learning and experience, and principally by Lyndwood, an eminent Canonist and Statesman, much employed in the public affairs of the Country in the reigns of Henry V. and VI. These Commentaries will be found to contain much valuable information on subjects connected with the History and Government of the Church.

To the foregoing enumeration must be added, also, the *Canons* of the English Protestant Church, passed in Convocation in 1603; § and such Acts of Parliament as make particular subjects matters of Ecclesiastical cognizance, or regulate the course of proceedings with respect to the same.

Courts.

THE ordinary ECCLESIASTICAL COURTS are; The *Provincial Courts*; being, in the Province of Canterbury, the Court of Arches, or Supreme Court of Appeal, the Prerogative, or Testamentary Court, and the Court of Peculiars; and in the Province of York, the Prerogative, or Testamentary, Court, and the Chancery Court;—the *Diocesan Courts*, being the *Consistorial Court* of each Diocese, exercising general jurisdiction;—the Court or Courts of one or more *Commissaries* appointed by the Bishop, in certain Dioceses, to exercise general jurisdiction within prescribed limits;—and the Court or Courts of one or more *Archdeacons*, or their Officials, exercising general or limited jurisdiction, according to the terms of their Patents, or to local Custom;—there are also *Peculiars* of various descriptions in most Dioceses, and in some they are very numerous: Royal, Archiepiscopal, Episcopal, Decanal, Sub-Decanal, Prebendal, Rectorial, and Vicarial; and there are also some Manorial Courts. ||

The *PROVINCIAL Courts* of the Archbishop of Canterbury and the Archbishop of York are independent of each other; the process of one Province not running into the other, but being sent, by a requisition, to the local authority, for execution. The Appeal from each of the Provincial Courts lies to the King, and a Commission issues under the Great Seal, in each individual Case of Appeal, to certain persons or *Delegates*, to hear and determine the matter in contest.

Of the three principal Archiepiscopal Courts of Canterbury, the *Arches Court* is the first. This Court exercises the appellate jurisdiction from each of the Diocesan, and most of the Peculiar Courts within the province. It may also take original cognizance of Causes, by letters of request from each of those Courts; and it has original jurisdiction on *subtraction of legacy* given by wills proved in the Prerogative Court of Canterbury.

The *Prerogative Court* has jurisdiction of all Wills and Administrations of Personal property left by persons having *bona notabilia*, or effects of a certain value, in divers jurisdictions within the Province. A very large proportion, not less than four-fifths of the whole *contentious business*, and a very much larger part of the uncontested, or as it is

termed *Common form business*, is despatched by this Court. Its authority is necessary to the administration of the effects of all persons dying possessed of personal property to the specified amount within the Province, whether leaving a Will or dying Intestate; and from the very great increase of Personal property, arising from the public Funds and the extension of the commercial capital of the Country, the business of this Jurisdiction, both as deciding upon all the contested rights, and as registering all instruments and proofs in respect of the succession to such property, is become of very high public importance.

The *Court of Peculiars*, which is the third Archiepiscopal Court of Canterbury, takes cognizance of all matters arising in certain Deaneries; one of these Deaneries is in the Diocese of London, another in the Diocese of Rochester, another in the Diocese of Winchester, each comprising several parishes; and some others, over which the Archbishop exercises ordinary jurisdiction, and which are exempt from, and independent of, the several Bishops within whose dioceses they are locally situate.

THE PROVINCE OF CANTERBURY includes Twenty-two Dioceses; and therein the Diocese of Canterbury itself, where the ordinary Episcopal jurisdiction is exercised by a *Commissary*, in the same manner as in other Dioceses.

THE PROVINCE OF YORK includes Four Dioceses, besides that of Sodor and Man; and the Archiepiscopal Jurisdiction is exercised therein much in the same manner as in the Province of Canterbury.

THE DIOCESAN COURTS take cognizance of all matters arising locally within their respective limits, with the exception of places subject to peculiar Jurisdiction. They may decide all matters of spiritual discipline; they may suspend or deprive clergymen, declare marriages void, pronounce sentence of separation *à mensâ et thoro*, try the right of succession to personal property, and administer the other branches of Ecclesiastical Law.

THE ARCHDEACON'S COURT is generally subordinate, with an appeal to the Bishop's Court; though in some instances it is independent and co-ordinate.

THE ARCHDEACON'S COURTS, and the various PECULIARS already enumerated, in some instances take cognizance of all Ecclesiastical matters arising within their own limits, though the Jurisdiction of many of the Peculiar Courts extends only to a single parish; the authority of some of them is limited to a part only of the matters usually the subject of Ecclesiastical cognizance; several of the Peculiars possess voluntary, but not contentious Jurisdiction.

THE ECCLESIASTICAL JURISDICTION comprehends Causes of a Civil and Temporal nature; some partaking both of a Spiritual and Civil character; and, lastly, some purely Spiritual.

In the First Class are Testamentary causes, Matrimonial causes for separation and for nullity of marriage, which are purely questions of *Civil* right between individuals in their lay character, and are neither Spiritual nor affecting the Church Establishment.

The Second Class comprises Causes of a *mixed* description, as suits for Tithes, Church Rates, Seats, and Faculties.

The Third Class includes Church Discipline, and the Correction of offences of a *Spiritual* kind. They are proceeded upon in the way of *criminal* suits *pro salute animæ*, and for the lawful correction of manners. Among these are offences committed by the Clergy themselves, such as neglect of duty, immoral conduct, advancing doctrines not conformable to the Articles of the Church, suffering dilapidations, and the like offences; also by Laymen, such as brawling, laying violent hands and other irreverent conduct in the Church or Churchyard, violating Churchyards, neglecting to repair ecclesiastical buildings, incest, incontinence, defamation; all these are termed "Causes of Correction," except defamation, which is of an anomalous character. These offences are punished by monition, penance, excommunication, suspension *ab inressu Ecclesie*, suspension from office, and deprivation.

WE propose to describe the CONSTITUTION of the ARCHIEPISCOPAL COURTS OF CANTERBURY; and the MODE OF PROCEEDING, according to the process or *Ordo Judiciorum* established therein, to which it is the duty of all subordinate Courts to conform, as far as circumstances will allow. If, from local considerations, a different course of proceeding should prevail in some instances, those instances should be considered as special exceptions.

The Ecclesiastical Laws, as now existing, have been for upwards of Three Centuries administered, in the Principal Courts by a body of men associated, as a distinct Profession, for the practice of the Civil and Canon Laws.

Some of the members of this body, in the year 1567, purchased the site upon which Doctors' Commons now

Matters of Ecclesiastical Jurisdiction.

Constitution of the Provincial Courts of Canterbury.

Judges and Advocates.

\* Lord Stair's Inst. of the Law of Scotland, Lib. 1. Tit. 1. p. 7. See also Bl. Comm. v. 1. p. 83.

† 25 H. VIII. c. 21. Preamble.

‡ Bl. Comm. v. 1. p. 83.

§ With respect to the force and effect of these Canons, see Burn's Ecclesiastical Law, vol. 1. Pref. p. 26, and the several Cases upon this subject contained in the notes.

|| The number of each class of Courts, in each Diocese, is set forth in a Table, Appendix (D.) No. 6; and Lists of all the Courts in England and Wales appear in Appendix (D.) Nos. 7, 8, 9. (Not here printed.)



stands, on which, at their own expense, they erected houses for the residence of the Judges and Advocates, and proper buildings for holding the Ecclesiastical and Admiralty Courts, where they have ever since continued to be held. In the year 1768, a Royal Charter was obtained, by virtue of which the then Members of the Society, and their successors were incorporated, under the name and title of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts."

This College consists of a President (the Dean of the Arches for the time being) and of those Doctors of Law, who, having regularly taken that degree in either of the Universities of Oxford and Cambridge, and having been admitted Advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected Fellows of the College in the manner prescribed by the Charter.

From this brief account of the origin, and present Constitution, of the College of Doctors of Law, it will be seen that no person can be admitted a member, or allowed to practise as an Advocate in the Courts at Doctors' Commons, without having first taken the degree of Doctor of Laws in one of the English Universities.

According to the present rules of these Courts, a Candidate for admission as an Advocate, is required to deliver, into the office of the Vicar General of the Province of Canterbury, a certificate of his having taken the degree of Doctor of Laws, signed by the Registrar of the University to which he belongs. A Petition, praying that in consideration of such qualification the Candidate may be admitted an Advocate, is then presented to the Archbishop, who issues his *Fiat* for the admission of the Applicant, directed to his Vicar General, who thereupon causes a Rescript or Commission to be prepared, addressed to the Dean of the Arches, empowering and requiring him to admit the Candidate as an Advocate of that Court. To this a proviso is always added, "that the Person to be admitted shall not practise for one whole year from the date of his admission," in order that, by attending during that interval, he may acquire a competent knowledge of the form of the proceedings in those Courts.

On the day appointed for the admission, which is always one of the four regular Sessions in each Term of the Arches Court, the Candidate is presented by the two Senior Advocates, to the Dean, who directs the Archbishop's Rescript to be read, and the Oaths to be administered; which being done, he is admitted into the number of Advocates, according to the tenor of the Rescript.

From the College of Advocates the Archbishop has always selected the JUDGES of the Archiepiscopal Courts.

Proctors.

PROCTORS in these Courts discharge duties similar to those of Solicitors and Attornies in other Courts.

In order to entitle a person to be admitted a Proctor, to practise in the Court of Arches, it is required that he shall have served a Clerkship of seven Years, under Articles, with one of the thirty-four Senior Proctors, who must be of five years standing; and who, by the Rules of the Court, is prohibited from taking a second Clerk, until the first shall have served five years; except in the event of the death of a Proctor, to whom a Clerk may have been articulated, before the Term of his clerkship is completed. In this case any other of the thirty-four Senior Proctors may take such Clerk for the remainder of the term, although he himself may at the same Time have a Clerk of less than five years standing. Before a Clerk is permitted to be articulated, he is required to produce a Certificate of his having made reasonable progress in Classical education.

When the Term of Seven Years is completed, the party is admitted a Notary, by a Faculty from the Archbishop of Canterbury; a Petition is then presented to His Grace, accompanied by a certificate, signed by three Advocates and three Proctors, that the party applying to be admitted has served, as articulated Clerk to a Proctor of the Courts for the full term of seven years. If this certificate is approved, the Archbishop issues his *Fiat*, and a Commission is directed to the Dean of the Arches, by whom the party is admitted under the title of a Supernumerary, with similar ceremonies to those observed on the admission of an Advocate.

The Proctor so admitted is qualified to commence business upon his own account immediately, but he is not entitled to take an articulated clerk until he shall have been for five years within the number of the thirty-four Senior Proctors.

Course of Proceeding.

THE course of proceeding in these Courts is now to be stated.

THE mode of commencing the *Suit* and bringing the parties before the Court is by a Process called a *Citation*, or summons, containing the name of Judge, the plaintiff and the defendant, the cause of action, and the time and place of appearance. This Citation, in ordinary cases, is obtained as a matter of course from the Registry of the Court, and under its Seal; but in special cases, the facts

are alleged in what is termed an *Act of Court*, and upon those facts the Judge or his Surrogate decrees the party to be cited; to which, in certain cases, is added an *Intimation*, that if the party does not appear, or appearing does not show cause to the contrary, the prayer of the plaintiff, set forth in the *Decree*, will be granted.

This process is served by some respectable person, generally by the APPARITOR of the Court if the distance will allow, by showing the original, under the seal of the Court, and delivering a copy of it, to the defendant. A certificate of the service is endorsed on the Citation, verified on oath by the person who has served it, and returned to the Registry. If the person to be served cannot be found, a return to that effect is made and certified, and a Citation *Vīs et modis*, or a compulsory Citation, may issue, to be served personally if possible, otherwise, on the door of the last residence of the party, or upon the door of the Parish Church, if he has no longer any known residence. If an appearance is not obtained to this Citation, the party is put in contempt, and the proceedings may be conducted *ex parte* or *in pœnam contumaciæ* as hereafter stated.

The parties cited may either appear in person, or by his Proctor who is appointed by an instrument, under hand and seal, termed a *Procy*. The Proctor thus appointed represents the party, acts for him and manages the Cause, and binds him by his acts.

In Testamentary Causes, the proceeding is sometimes commenced by a *Caveat*, entered by a party interested in the effects of the deceased person against the grant of any representation either by Probate or Letters of Administration, without notice being first given to him who enters the Caveat. This Caveat is then warned by the party claiming the representation either as Executor or Administrator, which is in effect a notice to the Proctor entering the Caveat, that he must appear and take further steps, if he intends to continue his opposition. Both parties are then assigned by order of court to set forth their respective claims, and the suit thus commences, either to try the validity of an alleged Will, or the right to Administration, either as under an Intestacy or with a Will annexed.

There is another Process in Testamentary matters, extremely useful and frequently resorted to, which it may be proper here to state.

The Executor, or other person claiming to take the grant of Probate of a Will or other Testamentary Instrument, may cite the next of Kin and other Parties interested under an Intestacy or a former Will, to appear and see the Will propounded and proved by witnesses; and if the parties cited do not appear and oppose the Probate, they are barred from afterwards contesting its validity, unless on account of absence out of the kingdom, or the like, sufficient cause for non-appearance be shown.

So again, the next of Kin, or other parties entitled either to the grant of Administration or under a former Will, may cite the Executor or other person apparently benefited under a suggested Will or Testamentary Instrument, to appear and propound it; or otherwise show cause why Administration should not be granted to the deceased, as having died intestate, or Probate decreed of a former Will; and the parties cited, not appearing, are barred from afterwards setting up the Will.

But if Probate or Administration be taken in common form, without citing persons having an adverse interest, the Grant may afterwards be called in, and the Executor or Administrator cited, and put upon proof of his right, as if no such common form Grant had issued.

Again, where no grant is applied for by the person primarily entitled to it, such as an Executor, Residuary Legatee, or next of Kin, process may be taken out by any person claiming an interest in the effects of the deceased, such as a Legatee, a party in distribution, or a creditor, calling upon the persons primarily entitled to accept or refuse the Grant, or otherwise to show cause why it should not pass to such person claiming an interest.

Or if a person be dead intestate, without leaving any known Relations, a Creditor may obtain the Grant, upon advertising for next of Kin in the Gazette and a Morning and Evening Newspaper, serving a Process on the Royal Exchange, and on the King's Proctor, the Crown having a right to take the Grant, if desired.

In all these and similar cases, the facts must be supported by Affidavit, all due Notice is required to be given, and the Grant is moved for before the Court, at its Sitting.

The mode of enforcing all process, in case of disobedience, is by pronouncing the party cited to be *contumacious*; and if the disobedience continues, a *Significavit* issues, upon which an *Attachment* from Chancery is obtained, to imprison the party till he obeys.

Enforcing Process.

In cases where some act is required to be done by the party cited, to exhibit an inventory and account, for instance, or to pay alimony, the compulsory process is en-



forced; but in some cases, where no act is necessarily to be done by the party cited, the plaintiff may proceed *in pœnam contumaciæ*, and the cause then goes on *ex parte*, as if the defendant had appeared.

The party cited, to save his contumacy, may appear *under protest*, and may show cause against being cited; such as, that the Court has no Jurisdiction in the subject-matter, or that he is not amenable to that Jurisdiction: this preliminary objection is heard upon *petition* and affidavits; and either the protest is allowed, and the defendant dismissed, or the protest is overruled, and the defendant is assigned to *appear absolutely*; and costs are generally given against the unsuccessful party.

Either party may appeal from the decision on this preliminary point; or the defendant, in case the Judge decides against him on the question of Jurisdiction, and on some other questions, may apply to a Court of Law for a *Prohibition*.

Some other points, such as the claim to Administration among persons of admitted equal degree of kindred, objections to an inventory and account, and other similar matters, may be heard upon *petition* and affidavit, where the facts are not of such a nature as to require investigation in the more formal proceeding of regular pleadings and depositions, with the benefit of cross-examining witnesses.

Pleadings.

THE form of the *Pleadings* is next to be described.

These are intended to contain a statement of the Facts relied upon and proposed to be proved by each party in the suit, the real grounds of the action, and of the defence.

*Causes*, in their quality, are technically classed and described, as *Plenary* and *Summary*, though in modern practice there is substantially but little difference in the mode of proceeding. All *Causes*, in the Prerogative Court, are *Summary*; so are proceedings in Appeals before the High Court of Delegates, whatever be the character of the original *Causes*; but other *Causes*, whether of a criminal or civil nature, are *Plenary*.

The first *Plea* bears different names, in the different descriptions of *Causes*. In Criminal proceedings, the first plea is termed *The Articles*; in form, it runs in the name of the Judge, who *articles* and *objects* the facts charged against the defendant: in *Plenary Causes*, not criminal, the first plea is termed *The Libel*, and runs in the name of the party or his Proctor, who *alleges* and *propounds* the facts founding the demand: in Testamentary *Causes*, the first plea is termed *An Allegation*.

Every subsequent plea, in all *Causes*, whether responsive or rejoining, and by whatever party given, is termed *An Allegation*.

Each of these pleas contains a statement of the facts upon which the party founds his demand for relief, or his defence; resembling the Bill and Answer in Equity, except that the allegation is broken into separate positions or *articles*: the facts are alleged under separate heads, according to the subject-matter, or the order of time in which they have occurred. Under this form of pleading, the Witnesses are *produced* and examined only to particular *articles* of the *allegation*, containing the facts within their knowledge; a notice or *Designation* of the Witnesses being delivered to the adverse party, who is thereby distinctly apprised of the points to which he should address his cross-examination of each Witness, as well as the matters which it may be necessary for him to contradict or explain by counter-pleading.

Before a plea of any kind, whether *Articles*, *Libel* or *Allegation*, is admitted, it is open to the adverse party to *object* to its admission, either in the whole or in part; in the whole, when the facts altogether, if taken to be true, will not entitle the party giving the plea to the demand which he makes, or to support the defence which he sets up; in part, if any of the facts pleaded are irrelevant to the matter in issue, or could not be proved by admissible evidence, or are incapable of proof.

These *objections* are made and argued before the Judge, and decided upon by him; and his decision may be appealed from. For the purpose of the argument, all the facts capable of proof are assumed to be true; they are, however, so assumed, merely for the argument, but are not so admitted in the Cause; for the party who offers the plea is no less bound afterwards to prove the facts; and the party who objects to the plea, is no less at liberty afterwards to contradict the facts. This proceeding is attended with great convenience in abridging the introduction of unnecessary and improper matter, to which parties themselves are generally too much disposed. They are apt to consider trivial circumstances to be important, and desire them to be inserted in the plea; a desire which neither the honest reluctance of the Practitioners, nor the judicious advice of Counsel, is always able to counteract; even the authority and vigilance of the Court itself cannot altogether prevent

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redundant pleading, and can only check it by taking it into consideration on the question of costs.

The proceedings just referred to have also the convenience of enabling parties, in many instances, to take the opinion of the Court in a very summary way, particularly in amicable suits; if the facts are candidly stated, and the Court, upon the plea being objected to, should be of opinion, that if proved, the facts either will or will not support the prayer of the plea; in the one case, if the plea is admitted, the further opposition may be withdrawn; in the other case, if the plea is rejected, the party offering it either abandons the suit, or appeals in order to take the judgment of a superior Tribunal. This course saves the expense and delay consequent upon proving the facts by witnesses, in cases where there exists no doubt of the facts being correctly alleged in pleas, and where the question between the parties is principally or perhaps altogether a question of law arising out of the facts so stated in plea.

When a plea has been admitted, a time, or *Term probatory*, is assigned to the party who gives the plea, to examine his witnesses; and the adverse party is assigned, except in criminal matters, to give in his *Answers* upon oath, to his knowledge or belief of the facts alleged.

The defendant may proceed then, if he thinks proper, or he may wait until the plaintiff has examined his witnesses, to give an *Allegation* controverting his adversary's plea. This *responsive allegation* is proceeded upon in the same manner; objections to its admissibility may be taken, answers upon oath be required, and witnesses examined.

The plaintiff may, in like manner, reply by a further allegation; and on that, or any subsequent allegation, the same course is pursued.

The *Pleadings* thus bring forward all the facts intended to be relied upon and proved on each side, and no surprise can well take place.

THE next proceeding to be stated, is the mode of taking Evidence.

The *Witnesses* are either brought to London to be examined, or if they reside at a great distance, or are otherwise unable to attend, they are examined by Commission near their places of residence. Their attendance is required by a *Compulsory*, somewhat in the nature of a subpoena, obedience to which is enforced in the same way as in other cases of contumacy.

The *Depositions* are taken in private by *Examiners* of the Court, employed for that purpose by the Registrars. The Examination does not take place upon written interrogatories previously prepared and known; but the allegation is delivered to the Examiner, who, after making himself master of all the facts pleaded, examines the witnesses by questions which he frames at the time, so as to obtain, upon each article of the allegation separately, the truth and the whole truth, as far as he possibly can, respecting such of the circumstances alleged as are within the knowledge of each witness.

The *cross-examination* is conducted by *interrogatories* addressed to the adverse witnesses, and when the *Deposition* is complete, the witness is examined upon the interrogatories delivered to the Examiner by the adverse Proctor, but not disclosed to the witness till after the examination in chief is concluded and signed, nor to the party producing him till Publication passes; and each witness is enjoined not to disclose the interrogatories, nor any part of his evidence, till after Publication: in order that the party addressing the interrogatories may be the better prepared, the Proctor producing the witness delivers, as before stated, a *Designation*, or notice of the articles of the plea on which it is intended to examine each witness produced.

The *Examination and Cross-examination of Witnesses* is kept secret until *Publication* passes, after which either party is allowed to *except* to the credit of any witness, upon matter contained in his deposition. The exception must be confined to such matter, and not made to general character, for that must be pleaded before publication; nor can the exception refer to matter before pleaded, for that should be contradicted also before publication. The exception must also tend to show that the Witness has deposed falsely and corruptly. These *exceptive allegations* are proceeded upon, when admitted, in the same manner as other pleas. They are not frequently offered, and are always received with great caution and strictness, as they tend more commonly to protract the suit and to increase expense than to afford substantial information in the Cause.

It is always, however, in the power of the Court to allow further pleading in a Cause; and if new circumstances of importance are unexpectedly brought out by the Interrogatories, the Court will, in the exercise of its discretion, allow a further plea after publication. This may also be permitted in cases where facts have either occurred

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or come to the knowledge of the party, subsequently to publication having passed.

Hearing.

THE Evidence on both sides being published, the Cause is set down for *Hearing*.

All the *Papers*, the pleas, exhibits, interrogatories, and depositions, are delivered to the Judge; who having them in his possession for some days before the Cause is opened, has a full opportunity of perusing, and carefully considering, the whole Evidence, and all the circumstances of the case, and of preparing himself for hearing it fully discussed by the Counsel.

All Causes are heard publicly, in open Court; and on the day appointed for the *Hearing*, the Cause is opened by the Counsel on both sides, who state the points of law and fact which they mean to maintain in argument; the Evidence is then read, unless the Judge signifies that he has already read it, and even then particular parts are read again, if necessary, and the whole case is argued and discussed by the Counsel.

Judgment.

THE *Judgment* of the Court is then pronounced upon the Law and Facts of the case; and in discharging this very responsible duty, the Judge publicly, in open Court, assigns the reasons for his decisions, stating the principles and authorities on which he decides the matters of Law, and reciting or adverting to the various parts of the Evidence from which he deduces his conclusions of Fact; and thus the matter in controversy between the parties becomes adjudged.

Reports of decisions in the Ecclesiastical Courts were not in former times laid before the Public, like those of the Courts of Westminster Hall: but for the last twenty years and upwards the Judgments of these Courts have been regularly reported. These reports are not only useful in the Jurisdictions itself, and the inferior Courts, but they also serve to explain to the Temporal Courts the principles of Ecclesiastical decisions, so as to enable them to form a more correct judgment of the proceedings, when they may have occasion to refer to them.

Execution

THE *Execution of the Sentence*, in case there be no Appeal interposed, is either completed by the Court itself,—such as by granting Probate or Administration, or signing a sentence of separation,—or remains to be completed by the act of the party, as by exhibiting an Inventory and Account, by payment of the Tithes sued for, and other similar matters, in which cases *Execution* is enforced by the compulsory process of *Contumacy*, *Significavit*, and *Attachment*.

Costs.

THE question of *Costs* in these Courts is, for the most part, a matter in the discretion of the Judge, according to the nature and justice of the case; and the reasons for granting or refusing costs are publicly expressed at the time of giving the Judgment.

If either party be condemned in costs, the Proctor of the other party brings in his bill. The bill is referred to the Registrar, who is attended by the Proctors on both sides, and after examining the bill item by item, he allows or disallows or modifies the several charges, according to the established practice, where such practice exists; and, in other cases, according to the reasonableness of each charge: having taken off all overcharges, he reports to the Judge, in open Court, the amount of the bill as allowed, and the Proctor makes oath that the sum reported has been necessarily expended by or on behalf of his party. If no objection has been offered to the Report, the Judge then taxes the bill at that sum, and decrees a monition for the payment of it; but if either party is dissatisfied with the Report of the Registrar on any item of the bill, the objection may be brought before the Court for its decision. The regular charges are, however, so well known and established, and the Registrars of the several Courts, who are acting under the sanction of an oath of office, are so experienced and respectable, being generally selected out of the body of Proctors, on the ground of their high character and professional knowledge, that an exception to their report as to costs rarely occurs.

The payment of the Costs thus taxed, as between *party and party*, is enforced by the process of *Contumacy*, *Significavit*, and *Attachment*, but the costs incurred by a party in a Cause, and due to his own Proctor, cannot be taxed by the Judge, nor the payment thereof be enforced by the Court; the Proctor must recover his bill of costs against his client by an Action at law.

Appeal to Delegates.

FROM the Archbishopial Court, as was before stated, *Appeal* lies to Your MAJESTY by petition to the Lord Chancellor, who issues a *Commission* under the Great Seal to certain Persons, appointed thereby to hear and determine the Cause in which the decree complained of has been made.\*

In ordinary cases, the *Delegates* are Three of the Puisne Judges, one from each Court, and three or more Civilians; but in special cases a fuller Commission is sometimes issued, consisting of Spiritual and Temporal Peers, Judges of the Common Law, and Civilians, usually three of each.

In case of the Court being equally divided in opinion, upon any question coming before them for determination, or if no Common-Law Judge forms part of the majority, a *Commission of Adjuncts* issues, appointing additional Judges of each description.

An Appeal suspends the execution of the Sentence.

Appeals are sometimes entered with little, if any, hope of obtaining the reversal of the Decision, but to harass the other party with expense and delay, and to extort a compromise.

Appeals may be accumulated. If the Suit begins in an Archidiaconal Court, it may be carried by appeal to the Diocesan Court, thence to the Arches, and afterwards to the Delegates; thus passing through Four Courts; to which may be added a Commission of Review.

Besides which, an Appeal lies from interlocutory matters, or as they are termed *grievances*, which may travel through the same course, and may occur repeatedly in the same suit.

From the decision of the *Delegates*, no further appeal lies as “matter of right;” but the unsuccessful party may present a petition to Your Majesty in Council for a *Commission of Review*. This petition is referred to the Lord Chancellor, who, after hearing Counsel on both sides, advises Your Majesty thereon.

It seldom happens that a Commission of Review is granted; as it is only some important misconstruction of Law, or error of Fact, in the Sentence of Court of the Delegates, which is considered sufficient to warrant the exercise of this interposition of the Royal Prerogative. Even the application for it is expensive and burdensome to the party in possession of the Sentence, and is sometimes resorted to, as in the case of Appeals, in order to extort a compromise. It has not even the check of costs, for it is commonly held, that costs cannot be given against the Petitioner.

A Commission of Review is not considered to have the effect of suspending the execution of the Sentence, though in practice it is attended generally with that consequence; a circumstance which renders the application further grievous to the other party.

HAVING thus described the nature and extent of the Ecclesiastical Jurisdictions at present existing, and the mode of proceeding in the Archbishopial Courts of Canterbury, we shall now submit such *Alterations and Improvements* as we would venture to recommend for adoption.

Alterations suggested.

WITH respect to the Jurisdiction of the *Delegates*, we have already, in our Special Report to Your MAJESTY, suggested that the ultimate Appeal in Ecclesiastical Causes should be transferred to the Privy Council under the regulations, and for the reasons, specified in that Report; to which reasons we do not feel it necessary to make any addition.

Transfer of Jurisdiction of Delegates to the Privy Council.

WE will now proceed to the consideration of the other Courts which exercise Ecclesiastical Jurisdiction; it will be more convenient to begin with the Peculiars, and afterwards to point out how far our observations respecting them are applicable to the Diocesan and Archidiaconal Courts.

Of inferior Courts to the Provincial Courts; and reasons for same.

The *Peculiar* Jurisdictions in *England and Wales*, with the Manorial Courts, amount in number to nearly 300.

Peculiars.

These Jurisdictions, as we have already stated, are of several kinds:

Royal Peculiars; Peculiars belonging to the Archbishops, Bishops, Deans, Deans and Chapters, Archdeacons, Prebendaries and Canons, and even to Rectors and Vicars; and there are also some of so anomalous a nature as scarcely to admit of accurate description. In some instances, these Jurisdictions extend over large tracts of country, embracing many towns and parishes, as the Peculiar of the Dean of Salisbury. In others, several places may be comprehended, lying at a great distance apart from each other. Again, some include only one of two parishes.

The Jurisdiction to be exercised in these different Courts is not defined by any general Law. It is often extremely difficult to ascertain over what description of Causes the Jurisdiction of any peculiar Court operates; and much inconvenience results from this uncertainty.

This variety of Jurisdiction has proceeded from different causes, connected with the history of the Church, which it is not necessary here to specify. The Peculiars were always considered as interfering with the beneficial exercise of the authority of the Bishop of the Diocese; and proposals have been advanced, at different times, to remove the inconvenience.

It was recommended by the Commissioners appointed to revise the Ecclesiastical Laws in the reigns of Henry the

\* On this subject see the previous Special Report.



Eighth and Edward the Sixth, that the power of the Bishop, in matters of Discipline, should extend to all places within the Diocese, notwithstanding any exemptions or privileges they might enjoy.

In the reign of Queen Elizabeth, a suggestion was made in Convocation, or prepared for consideration there, that it should be proposed to Parliament to subject peculiar and exempt sites and jurisdictions of Monasteries to the Diocesan. Bishop Randolph was occupied with the same design, and made it the subject of several Charges to his Clergy, in the Diocese of Oxford.

In 1812, a Bill for the better regulation of Ecclesiastical Courts, was brought into Parliament by Sir W. Scott, and having passed the House of Commons, was afterwards dropped in the House of Lords. A principal clause in that Bill provided "That the power of hearing and determining "contested Causes of Ecclesiastical cognizance should be "exercised, only, by Ecclesiastical Courts sitting under the "immediate commission and authority of Archbishops and "Bishops, and not by Inferior or other Ecclesiastical "Courts."

We think that the whole Jurisdiction of these Peculiars, both *Contentious* and *Voluntary*, should be abolished; and we are induced to come to this conclusion by the following, amongst other, Reasons:—

With respect to the *Contentious* Jurisdiction, it is wholly impossible that Justice can be administered efficiently, and with satisfaction to the Public. In the majority of the Peculiar Courts, and perhaps in all, there neither are nor can be efficient and experienced Judges, Officers, Advocates or Practitioners. The Emoluments are too small, and the number of Causes too few, to ensure these requisites for the due Administration of Justice. Consequently, no confidence is reposed in these Tribunals; and delay arises, and expense is incurred, in applying for Letters of Request, or in resorting to other means of escaping the Jurisdiction. In some cases, too, the grievance is enhanced by the multiplication of Appeals.

With regard to *Testamentary* Cases, the inconvenience is perhaps the greatest. There cannot be expected, and in fact there are not to be found safe places of Custody for the Wills to be deposited in the Registries; and thereby the most important Titles to Real and Personal Estate may be endangered. In admitting Testamentary Papers to Probate in common form, according to the existing state of the Law, an accurate knowledge of the rules which ought to govern the practice is very essential; but where the opportunities of acquiring experience are few, such accuracy cannot be attained. In cases where it is necessary to make searches, the multiplication of Courts for the Probate of Wills of course greatly increases the trouble and expense. On the question of *bona notabilia*, many difficulties result from these searches, and sometimes more serious injury.

It would be easy to set forth many other reasons, inducing us to suggest the entire abolition of these Jurisdictions; but as we are not aware of any one benefit which would result from their continuance, we conceive that the circumstances already stated will suffice. We therefore propose that the Peculiar Jurisdictions should be abolished; and that every place should be subjected in all respects to the Bishop, within the limits of whose Diocese it happens to be locally situate, as if no such Peculiar Jurisdiction had ever existed.

We deem it also expedient, that the places now subject to Peculiar Jurisdiction, should be made a component part of some Archdeaconry. Where they are at present situate altogether within any Archdeaconry, there can be no difficulty in including them at once; in some cases they may not be bounded on all sides by any one Archdeaconry, and then it will be necessary to attach them to such Archdeaconry as a consideration of all the circumstances may render most advisable.

Diocesan  
Courts.

The *Diocesan* Courts are exempt from some of the objections which may be urged against the Peculiar Jurisdictions; but there are many reasons, derived from the state of these Courts in the present times, and the importance of some parts of the business arising there, which induce us to think that the transference to the Provincial Courts of the Jurisdiction hitherto exercised by them, would be a great improvement in the Administration of Ecclesiastical Law.

In the course of our inquiry, we became early convinced of the impracticability of having Judges duly qualified, together with a competent Bar and skilful Practitioners, to administer in the Diocesan Courts the Testamentary and Matrimonial Laws, which involve matters of such very high importance to the parties litigant, and to the Public. The Returns which have been obtained from the Diocesan Registries, show that the annual amount of Business, and the emoluments of the Judges and other Officers, and of the Practitioners in these Courts, make it impossible, in the

greater number of Dioceses, that efficient Courts can be maintained. This is a defect, which, if it cannot be removed, outweighs all the advantages that may sometimes attend the exercise of Episcopal Jurisdiction within the local limits of the respective Dioceses. From these considerations, it appeared to us to be advisable to recommend the transfer of the whole *Contentious* Jurisdiction to the Provincial Courts; a measure, the propriety of which became still more apparent to us when we found it expedient to alter the mode of taking Evidence in the Ecclesiastical Courts: this subject will be hereafter discussed at length.

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Similar considerations apply to the *Archidiaconal* Courts.

Archidiaconal  
Courts.

\* \* \* \* \*

WHEN considering the transfer of the Jurisdiction, our attention has been directed to the existing Constitution of the Arches and Prerogative Courts of *Canterbury*.

Union of the  
Arches and  
Prerogative  
Courts.

The profits of the Judge and Officers of the Arches Court are extremely small, as will appear from the Returns; viz. on an average of the last three years, the Judge, 22*l.* 8*s.* 9*d.* per annum; and the Registrar, 140*l.* These emoluments are utterly inadequate, alone, to sustain any Court. It deserves consideration, whether this Court should not be united with the Prerogative Court; for many years, one Judge has presided in both; and we are not aware of any circumstances which would render inexpedient their entire union.

Similar Arrangements will be requisite for the Provincial Court at *York*.

\* \* \* \* \*

We take this opportunity of observing, that we advise [that our recommendations as to the introduction in Probate and Matrimonial Causes of] Trial by Jury and the admission of *viva voce* Evidence, be applied to all other Causes over which the Provincial Courts may continue to exercise Jurisdiction.

Trial by  
Jury.

It is of great importance to the welfare of the Church, and the maintenance of peace and goodwill amongst the Parishioners, that the Laws respecting *Churchwardens* and *Church Rates* should be settled and consistent, and promptly and cheaply administered.

Churchwardens.

The Ecclesiastical Courts have, under many limitations, exercised jurisdiction over those questions; but the proposed abolition of the inferior Courts will render it necessary to suggest some important alterations.

The general rules which govern the Election of Churchwardens are those of the 89th Canon; which directs as follows:—

"All Churchwardens or Quest men in every Parish, shall be chosen by the joint Consent of the Minister and the Parishioners, if it may be; but if they cannot agree upon such a choice, then the Minister shall choose one, and the Parishioners another; and without such a joint or several choice, none shall take upon them to be Churchwardens; neither shall they continue any longer than one year in that office, except perhaps they be chosen again in like manner. And all Churchwardens at the end of their year, or within a month after at the most, shall before the Minister and Parishioners give up a just account of such money as they have received; and also what particularly they have bestowed in reparations and otherwise, for the use of the Church. And last of all, going out of their office, they shall truly deliver up to the Parishioners whatsoever money or other things of right belonging to the Church or Parish, which remaineth in their hands, that it may be delivered over by them to the next Churchwardens by Bill indented."

In practice, though perhaps not strictly in accordance with the original intention, the Minister generally nominates one, and the Parishioners the other.

The parishioners may have the right, by immemorial custom, of electing both. In some very few instances the Lord of a Manor has claimed, by prescription, to appoint one.

After the election, the Churchwardens must be sworn before the proper Ecclesiastical Authority.

If the election be disputed, great difficulty arises in trying its validity; the Ecclesiastical Court has no authority to determine the question; and the extent of discretion which it should exercise in swearing in, or declining to swear in persons alleged to be chosen Churchwardens, is difficult to be defined. The Writ of *Quo Warranto* will not be granted. The validity of the election can be tried only by action at law.

Many inconveniences occur from this state of the law. If new Churchwardens are sworn in, during the interval which must elapse between the election and the trial, the duties of Churchwardens may remain in great measure unperformed, the Church be neglected, or expenses relative to it be incurred, for which it is impracticable afterwards to



obtain a legal Rate;\* and when one of the parties is desirous of preventing the settlement of the question, some time may elapse before it is practicable to bring the action. Considering that the duration of the office is for one year only, the delay and expense attendant on the present mode of trying the validity of the election ought, if possible, to be diminished. We propose that the Quarter Session should be invested with authority to try these questions, with the power of sending a case to the Court of King's Bench in matters of difficulty. The practice of swearing in the Churchwardens, we think, should be continued. It sometimes happens that the parish neglects to choose Churchwardens; this generally takes place when the right of election is in some manner disputed. From the last authority† it appears that a *Mandamus* will issue to compel the parish to elect, but it would be desirable to have a more easy remedy; perhaps when the parish refuses or neglects to choose a Churchwarden the Quarter Sessions might have power to appoint, so also to remove if the Churchwardens misconduct themselves during their year of office; and in this case it would be expedient that the Quarter Sessions should appoint the person or persons to serve for the remainder of the year.

\* \* \* \* \*

Church  
Seats.

AN Exclusive title to *Pews* and *Seats* in the Body of the Church may be maintained in virtue of a *Faculty*; or by *Prescription*, which is founded on the presumption that a Faculty had been heretofore granted. All other *Pews* and *Seats* in the body of the Church are the property of the Parish; and the Churchwardens, as the officers of the Ordinary, and subject to his control, have authority to place the Parishioners therein. No precise Rules are prescribed for the Government of Churchwardens in the use of this power, for its due exercise must depend on a sound judgment and discretion applied to the circumstances of the Parish.

The object to be attained is the general accommodation of all the Parishioners; and in endeavouring to effect this, due consideration must be paid to rank, station, number in family, long possession, and the particular state of the Parish with respect to Church Room.

Faculties are granted by the authority of the Ordinary, and in various forms. Sometimes a Pew is annexed to a messuage; in other cases, the exclusive enjoyment has been conferred on an individual and his family.

A Prescriptive title presumes the Pew to have been annexed to a messuage from time immemorial.

Where a Pew is claimed as annexed to a House by Faculty or Prescription, and in that case only, the Courts of Common Law exercise jurisdiction; on the ground of the Pew being an easement to the House.‡

The Ecclesiastical Court has jurisdiction in all Suits respecting *Pews*; but where prescriptive rights come in question, Prohibition will be granted on the application of either party for the purpose of having the Prescription tried by a Jury. In all other cases the entire cognizance of all matters relating to *Pews* and *Seats* in the Body of the Church is entrusted to the Ecclesiastical Courts. The conduct of the Churchwardens in placing the inhabitants is subject to be reviewed by the same Tribunals, and any indiscretion or error of judgment may be there corrected; so also by a Suit for *Perturbation of Seat*, namely, the unauthorised intrusion of any individual into a Seat lawfully occupied by another, may be prevented. Various other measures for the more convenient seating of the Parishioners may be legally effected, through the exercise of the same authority.

With respect to *Seats* in the Chancel, the law has not been settled with equal certainty, and great inconvenience has been experienced from the doubts continued to be entertained.

Some are of opinion that the Churchwardens have no authority over *Pews* in the Chancel. Again, it has been said that the Rector, whether spiritual or lay, has in the first instance at least a right to dispose of the *Seats*; claims have also been set up on behalf of the Vicar; the extent of the Ordinary's authority to remedy any undue arrangement with regard to such *Pews* has been questioned.

The existence of claims to the exclusive enjoyment of *Pews* in the body of the Church by Faculty or Prescription has of late years produced injurious consequences, especially in parishes where there has been a large increase of population. Sometimes these exclusive rights prevent an arrangement of the Church-room the most beneficial for the general accommodation. In some instances, these *Pews* remain unoccupied, either from the decay of the houses to which they were originally annexed, or from other circumstances.

Perhaps one of the most detrimental effects arising from prescriptive titles is the giving rise to an infinite number of claims founded on possession only, and which should they be investigated, might not be legally maintainable. For practicable purposes, it is not easy to define what is absolutely necessary to constitute Prescription, and consequently claims are set up of a doubtful character, which greatly impede the Churchwardens, and in some cases the Court, in making those arrangements for the distribution of the Church-room, which the interests of the parish most require. With reference both to our previous recommendations and with a view to introduce some improvements which may be productive of benefit, we have agreed humbly to suggest to Your MAJESTY the following Propositions:—

That in future no Faculties shall be granted permanently annexing to any messuage a Pew in the Church or Chancel.

That a Commission shall issue in each Diocese, directed to the Archdeacon or Archdeacons, or one or more of the Rural Deans, requiring them, in conjunction with two other individuals, to make a full investigation as to the *Pews* and *Seats* claimed to be held in each Parish Church or Chapel by Faculty or Prescription; that where such claims shall be established to the satisfaction of the Commissioners, a Record of the same, to be kept in the Registry of the Diocese, should be made. We think it extremely desirable that all claims, where no Faculty or legal Prescription exists, should be finally extinguished; but we feel considerable difficulty in suggesting measures to effect that end. When persons claiming such Rights decline to come forward before the Commissioners to establish them, we can discover no hardship in precluding them from asserting a title hereafter; but more doubt may be entertained as to the course fit to be pursued where the claim is asserted but rejected by the Commissioners. Expense is so material a consideration in these matters, that we do not feel justified in recommending any mode of trial which would subject the parties to any legal costs. To invest the Commissioners with full power finally to determine all these questions will be the course most effectual for their speedy decision.

When once the claims at present existing are disposed of, we are of opinion that the greatest difficulties in the way of a beneficial apportionment of Church-room will be removed. The right of placing the parishioners in the first instance will then remain with the Churchwardens; by their authority quiet possession will be ensured, until a change of circumstances shall require some alteration for the benefit of the parishioners. The Archdeacon, we think, may be safely intrusted with the power of remedying any evils which may arise from indiscretion in the Churchwardens, and we therefore propose that the Archdeacon should be invested with authority finally to regulate the right of sitting in all *Pews* and *Seats* not held by Faculty or Prescription.

In cases where *Pews* are annexed to Houses by Faculty or Prescription, the Courts of Common Law would still retain their jurisdiction to afford a remedy, when any infringement on these rights has been committed; except that it is not fitting that the convenience of the Parishioners in general should be sacrificed to the exclusive accommodation of any individuals; and therefore we submit, that in all cases where it may be expedient to repair, enlarge, or rebuild the Church, it shall be competent to the Bishop or Archdeacon to direct *Pews*, though held by Faculty or Prescription, to be removed; and on the Church being restored, the Owners of such *Pews* shall be entitled to other *Pews* in lieu thereof, as nearly as may be of the same size and with the same convenience of situation.

In other cases, where the Archdeacon's authority may be disobeyed, it will be expedient to give the individual aggrieved a right of action against the disturber; and in this action as a title to sue, it should be only necessary to produce the Archdeacon's written authority.

We are also humbly of opinion that great benefit would arise from extending these arrangements to *Pews* and *Seats* in Chancels; and if this be done, the reparation of all *Seats* not enjoyed by exclusive title would be a burden, to which the parishioners at large would with justice and propriety be subjected.

IF any Spiritual Person holding any Preferment for Life, allow the Parsonage Dilapidations, House, Stables, Barns, or any other of the Buildings, or the Fences on the Property of the Church to fall into decay, or commit or allow to be committed any wilful waste on the same, he may be proceeded against in the Ecclesiastical Court, and compelled to make the necessary Reparation. In case of accident by fire, the same responsibility attaches.

Though Suits of this description are infrequent, we think that this Branch of Jurisdiction ought to be retained, and

Dilapidations.

\* All rates to reimburse are illegal, *Lancaster v. Tricker*, 1 Bing. 201. Same, 5 Mad. 4. There are other authorities to the same effect.

† *The King v. Inhabitants of Wix*, 2 B. & Adol. p. 197.

‡ *Mainwaring v. Giles*, 5 Barnwell & Alderson, 361.



that it may, when necessary, be beneficially exercised by the Provincial Courts. Some modifications may, however, be advantageously introduced. These Proceedings have hitherto been carried on in the Criminal Form: in lieu of this, we are of opinion, that a Civil Suit should be substituted, and the Defendant compelled by Sequestration to obey the Orders of the Court; preserving to all the authorities of the Church, the Patron and Parishioners, a right to institute the Proceedings.

When the *Chancel* is repaired by a Spiritual Incumbent, the Proceeding just described will in every respect apply; but in cases where a Lay Rector or other Impropiator is bound to repair, it may not be expedient to enforce a Sentence given in a Civil Suit by Sequestration issuing from the Ecclesiastical Court; but we anticipate no inconvenience from this circumstance, if the suggestions we have made for carrying the Process of the Provincial Courts into effect be adopted. The right of bringing these Suits should be subjected to the same Regulations as those proposed for Suits instituted against Spiritual Incumbents.

Suits for *Dilapidations* may now also be brought upon any vacancy made by the Incumbent, against him or his personal Representatives, by the Successor to the Benefice. This jurisdiction, which is enjoyed in common with the Courts of Common Law, we think ought to be preserved.

Doubts have been entertained, whether Suits for Dilapidations could be brought against *Perpetual Curates*. We are humbly of opinion, that all such or any similar Persons holding preferment for life, whether in the strict acceptance of the term Perpetual Curates or not, should in respect of all property they hold in right of the Church, be liable on account of Dilapidations to all proceedings which may be lawfully carried on against Spiritual Rectors or Vicars.

During the last half century, land has frequently, upon enclosures taking place, been allotted to Benefices in lieu of Tithes; there may be some question whether the General Rules applicable to Dilapidations could be extended to such Allotments; this doubt should in our judgment be set at rest, by declaring that all property of the Church so acquired, should with respect to Dilapidations be deemed *Glebe*.

It will be desirable also to invest the Provincial Courts with power, upon application, to allow *Mines* to be opened and worked, upon conditions equitable and fair to the Persons at present holding Spiritual Preferment, and their Successors; and in all cases of this description, notice should be given to the Patron.

Tithes.

THE Ecclesiastical Courts possess a Jurisdiction in all cases of *Tithes*, but the Courts of Common Law, *propter defectum Triatonis*, now restrain them from trying any cases of Modus or Prescription, if either of the parties think fit to apply for a Prohibition.

Suits for Tithes in the Ecclesiastical Courts have been gradually diminishing in number; and though they occasionally do occur, on the whole they are not numerous.

Sequestrations.

QUESTIONS arising from *Sequestrations* are but seldom agitated in the Ecclesiastical Courts; but the subject is one of no small importance to the Interests of the Church, and we therefore feel it our duty to bring it more prominently under consideration.

Sequestrations issue under the following circumstances: 1st, In obedience to Writs from the Courts of Common Law, whereby the Bishop is directed to levy certain Sums in pursuance of the Statutes regulating Queen Anne's Bounty;—2dly, Under the various provisions contained in the Statute 57 Geo. III. c. 99, and in cases of Outlawry;—3dly, In pursuance of Decrees or Orders emanating from the Ecclesiastical Courts, in cases where Clergymen are proceeded against before those Jurisdictions;—and, lastly, during Vacancies.

In all these cases, we apprehend the Law clearly to be, that before any proportion of the profits of the Benefice can be applied in payment of Debts, or for any other purpose, the Service of the Church must first be provided for out of those profits, and when this has been done, the Buildings and Fences in the Glebe, and the Chancel also when the Incumbent repairs, ought to be sustained and kept in proper order. The right of nominating the Sequestrator lies with the Bishop; but when the Sequestration issues on account of Debts, it may often happen that the Sequestration is committed to the Creditor, or his nominee; in all other cases, the Bishop exercises his right of nomination by selecting according to his own judgment.

We are inclined to think that it would be more expedient if Creditors, or their nominees, were not appointed; and that in effect the same benefit would be derived to the Creditor, and with less detriment to the Benefice.

The grounds of this opinion will more clearly appear, when the subsequent observations are considered: at present we will only add, that the Expense of collecting the

profits, by a person resident on the spot, is likely to be less than when the same duty is performed by a Creditor or his Attorney, most probably resident at a distance.

By the existing Law, the Sequestrator has no power to compound for Tithes; and his right of Action for the recovery of the Profits of the Benefice is most inconveniently restricted.

The Bishop must of course license every Curate appointed to officiate in his Diocese; but the Law has not distinctly stated in whom the right of appointment shall vest.

There is no Rule prescribed for the Salaries of such Curates.

There is no established Regulation as to the remuneration of Sequestrators.

We propose that the following Regulations be adopted:

Proposed Regulations.

1. That the Bishop shall in all cases nominate the Sequestrator; who shall not be a Creditor, nor his Attorney.

2. That a reasonable remuneration for the services of the Sequestrator, and all necessary expenses, shall be allowed.

3. That the Sequestrator shall have power to compound for the Tithes, for any period not exceeding Twelve Months; provided that the approbation of the Bishop be first obtained; and so if the Sequestration shall continue, from time to time, with the like approbation.

4. That the Sequestrator shall be enabled to sue, in any Court, for any Tithes or any Compositions so made by him; and, in case of Tithes, when the amount is under Ten Pounds, that he may resort to the Jurisdiction of the Magistrates, in the same manner and under the same restrictions as the Incumbent himself may now lawfully do.

5. That at the end of every Six Months, or within One Month afterwards, the Sequestrator shall render an Account into the Registry of the Bishop, to be there filed. That this Account may be objected to by the Bishop, the Creditor, or Incumbent, as the case may be, and that Proceedings for such purpose may be instituted in the Provincial Court; the original Account being then transmitted to the Registry of that Court, and a Copy preserved in the Registry of the Bishop.

6. That, in all cases of Sequestration, the Bishop shall have the right of nominating the Curate.

7. That the Salaries of all such Curates shall be regulated by the provisions of the Statute, 57 Geo. III. c. 99; save that for this purpose all Incumbents shall be presumed to have been in possession of their Benefices since the 1st day of January 1813.

8. That, in all cases of Sequestration, the Bishop shall have the power of summarily, and without Appeal, removing the Curate or Sequestrator, and appointing another in his room.

9. That two Sequestrations for Debt shall not issue together; but that, in such cases, when a second Writ comes to the Registry, a Note shall be made thereof, and priority as to time reserved to it. Any Creditor bringing a second or further Writ shall be entitled to call for an Account from the Sequestrator previously appointed, and may offer objections to the same.

10. That every Sequestration shall be duly returned into Court.

11. That, in all cases where Sequestrations are issued under the provisions of the Statute of the 57th Geo. III. c. 99, the same shall suspend all previous Sequestrations; and that, after defraying the expenses attendant on the Sequestrations so issued under the said Statute, the Salaries in any manner due by law to the Curates, and the expenses of sustaining the Parsonage House buildings and other similar charges, the clear balance shall be paid over to the person who under the previous Sequestration would have been entitled thereto; and at the period when the Sequestrations issued under the provisions of the said Act cease, in any other way than by vacation of the Benefice, the former Sequestrations shall revive.

WE have now concluded the observations which we have deemed it proper to make respecting the *Civil Jurisdiction* exercised by the Ecclesiastical Courts.

It remains for us to offer to Your MAJESTY'S consideration some suggestions respecting the authority hitherto possessed by those Tribunals, of a *Criminal* nature.

OUR notice has been first attracted to that branch of it which embraces the *Correction of Clerks*. It is most fitting that there should exist some Tribunal to which the Clergy should be amenable for any open violation of Morality, or disregard of the sacred obligations into which they entered on becoming Ministers of the Church of England; but we have had the satisfaction of finding that for many years last past the instances have been very rare in which it has been necessary to resort to judicial proceedings, for the purpose of punishing Offences committed by them.

Correction of Clerks

Complaints, however, having been made of the Delays and Expenses attendant on the present mode of proceeding,



for the correction of Ecclesiastical Offences committed by the Clergy, and for maintaining the order and discipline of the Church; we have addressed our serious attention to this subject, as one of the highest importance; and we have agreed to suggest such alterations and amendments in the present Law, as appears to us to be adapted to maintain and enforce the authority and control of the Bishops over their Clergy; and to provide a Form of Proceeding, as summary and expeditious as may be consistent with the ends of Justice, and at the same time calculated to spare all unnecessary Expense.

It is indispensably necessary that, where a Clergyman is guilty of those offences against morality, decency, and the good order of the Church, which tend to disgrace the Church itself, and to injure the cause of Religion, there should be some ready mode of removing the scandal, by suspending the offender, or, if necessary, by depriving him of his benefice, and degrading him from his office. "It appertaineth," says the 26th Article, "to the discipline of the Church, that inquiry be made of evil Ministers, and that they be accused of those that have knowledge of their Offences; and, finally, being found guilty, by just judgment be deposed." And even while the investigation is pending, which should be prosecuted as speedily as is consistent with justice, it may be thought expedient to prevent a Clergyman, under such a charge, from the customary exercise of his functions.

In the case of Stipendiary Curates, whose office is only temporary, the Bishop can in some degree remedy these evils, by revoking their licenses: but an Incumbent is a person possessing rights, both temporal and spiritual, from which, according to the present law and practice, he can only be removed by death, cession, resignation, or a judicial process and sentence. In these respects, we do not recommend any material change. Without encroaching on the rights of the Beneficed Clergy, or depriving them of the means of defence, we shall, however, venture to propose such alterations in the present practice as may render the means of inquiry, and correction, more summary and effectual.

In ancient times, the authority of the Bishop over his Clergy was enforced by the exercise of his voluntary jurisdiction, in what was termed his *forum domesticum*, by private inquiry or inquisition, with little restraint from the forms observed in contentious Suits in the public Courts of Justice.

The mode of proceeding in such cases, as far as it can now be traced, was very summary. The Bishop acted on the Presentment of the Churchwardens, or on information obtained on his Visitations, or in other authentic form. The alleged offender was cited to appear before the Bishop, to answer to articles or charges in writing exhibited against him. He was required to make answer to them upon Oath, and to produce, as Compurgators, a certain number of his neighbours, who were acquainted with his course of life, and who might be able to swear that they believed him innocent of the charge imputed to him. If he refused to answer, he was reputed guilty *ex confesso*, and was punished by admonition, suspension, or deprivation, according to the nature of the offence.\*

By a Statute passed in the first year of the reign of Henry VII.† power was given to all Archbishops and Bishops, and other Ordinaries having Ecclesiastical jurisdiction, to punish Priests, Clerks, and Religious men, convicted before them of adultery, fornication, and other incontinency, by committing them to ward and prison, there to abide for such time as should be thought to the Bishop's discretion convenient for the quantity or quality of the trespass; and the Act describes the conviction of such offenders as passing "on examination before the Ordinary, and other lawful proofs required by the Law of the Church."

This Statute clearly shows the importance attached to an efficient control over the moral conduct of the Clergy; but we are not aware of any instances in which it has been enforced since the Reformation, and we recommend that it should be repealed.

Attempts were made to introduce the inquisitorial process into the general exercise of Ecclesiastical Jurisdiction, but it was restrained, as repugnant to the principles of the Law of England; and the Preamble of the Statute passed in 1534‡ against Heresy, recites, that "It standeth not with the right order of justice or equity that any person should be convicted, and put to the loss of his life, good name or goods, unless it were by due accusation and witnesses, or by presentment, verdict, confession, or process of outlawry."

The Oath *ex officio* was prohibited as to Laymen, except in certain cases\*; but it was continued, so far as regarded the Clergy, till the middle of the seventeenth century, when it was abolished by Statute.†

The exercise of Ecclesiastical Discipline, for a century after the Reformation, was sustained and strengthened by the power and influence of the High Commission Court, which was first established by Henry VIII. in virtue of his Supremacy, and was afterwards continued under the powers given to the Crown by Statute in the reign of Queen Elizabeth‡, but was abolished by the Legislature in 1640.§

On the abolition of that Court, opinions began to be entertained and disseminated by the Sectaries, hostile to the continuance of any power of coercion by Ecclesiastical proceedings, as is recited in the Statute passed in the 13th year of Charles the Second, to correct that construction of the Statute of 1640; and the authority of the Bishop over his Clergy may be supposed to have been weakened by the prevalence of such opinions, and by the general political events of those times.

In the beginning of the next century, Bishop Gibson was desirous of reviving, in the Diocese of London, the summary mode of proceeding against Clergyman, especially in cases of Non-residence; but the persons cited, in some instances, prayed Articles, and asserted the right of defending themselves according to the Rules of Practice of the established Courts, and it was ultimately found impossible to resist that demand.

Proceedings against Clergymen for Ecclesiastical offences have, accordingly, in modern practice been uniformly conducted by the same rules of proceeding as are observed in other Criminal cases, in the Spiritual Courts.

We have observed, that the instances of criminal misconduct or neglect of duty, which have been made the subject of proceedings in the Ecclesiastical Courts, have, when compared with the large number of the Clergy, been very few. Such cases during the last five years, as certified to us by Returns from the Registrars of the several Diocesan Courts, have not exceeded the number of fifteen.

At the same time, it has come to our knowledge that cases have sometimes occurred, in which Clergymen, who have been charged with immoral conduct, have chosen, rather than risk the issue of a suit in the Spiritual Court, either to resign their Benefices, or to leave them to the care of Curates appointed by the Bishop, and to become non-resident, by licence or tacit permission.

Some cases of a flagrant nature, which have occurred of late years, have attracted the attention of the Public to the corrective Discipline of the Church, as administered by the Ecclesiastical Courts, and have at the same time exhibited in a strong light the inconveniences which have attended the application of the ordinary process of the Courts to such suits; namely, an injurious delay in effecting the desired object of removing Ministers of immoral and scandalous lives from the administration of the sacred offices of the Church; and the large expenses incurred in such suits.

These inconveniences are in some degree unavoidable, and inseparable from proceedings so deeply affecting the reputation and interests of the party accused; in which a full liberty of defence ought in justice to be allowed him. But it must be admitted that some unnecessary delay appears to have been occasioned by the forms of pleading, and the terms allowed for the examination of numerous witnesses on successive pleas, who are produced sometimes to prove charges that are laid retrospectively through a period of many years. So far as it may be important to establish habitual misconduct, some retrospect will be necessary; but we are disposed to recommend that this retrospect should be confined within restricted limits. The large expenses have been occasioned by the same causes, and also by the right of appeal, which is usually exercised to the utmost extent, with the hope of deferring, if not of reversing, an unfavourable Sentence. It may be stated, that, upon an average, such Suits have not usually been brought to a termination in less than two years. One particular case was protracted through five years, and the expenses incurred by the successive Diocesans, in prosecuting the Suit, amounted to a sum of not less than £1,500. This was a peculiar and an extreme case, in which proceedings for a Prohibition were carried on in the Court of King's Bench, and afterwards by Writ of Error in the House of Lords; and when the question of Prohibition had been decided against the Defendant, the case was carried by Appeal to the Court of Delegates, where the Decision of the Court of Arches was ultimately affirmed.

\* Clark Art. 311, & seq. Oughton, p. 140. *Politia Ecclesiae*, Tit. 5 p. 299.

† 1 Hen. VII. c. 4.  
25 Hen. VIII. c. 14.

\* 12 Coke's Rep. p. 26.

† 13 Chas. II. c. 12.

‡ 1 Eliz. c. 1.

§ 16 Chas. I. c. 11.



According to the present form of proceedings, however, the expenses incurred by the promoter must be considerable, even in ordinary cases.

The interests of religion evidently require that some provision should be made for the institution and effectual prosecution, of such Suits: but it may be a hardship on the Bishop, that he should be called upon to sustain a heavy burthen of litigation in the discharge of a public duty.

It may therefore deserve the consideration of the Legislature, whether any means can be devised of providing for the necessary expenses of Prosecutions, in which the Public have so great an interest. This is a question, however, upon which we cannot venture to offer any specific suggestions, although we have felt it to be our duty to notice the difficulty, and humbly to submit it for Your MAJESTY'S consideration.

Deeply impressed with the importance of the subject, and the difficulties with which it is surrounded, we have endeavoured to find a remedy for some of the inconveniences which attend the present mode of proceeding, without prejudice to any interests, and without lessening, in the smallest degree, any security which may be justly claimed for the maintenance and protection, either of the civil rights, or of the spiritual character and functions, of the accused parties.

For these reasons, we have agreed to submit to Your MAJESTY'S consideration such an alteration in the present mode of exercising the Episcopal Jurisdiction in Suits against Clerks, for Ecclesiastical Offences, as will we hope prevent, or at least diminish, the delay and expense attending Proceedings of this nature.

With respect to the Tribunal which we recommend, we may remark that it will restore to the Bishops that personal jurisdiction which they originally exercised, and which was afterwards delegated by them to their *Chancellors* and *Officials*. The doctrine of the Canon Law is that, although the trial of Causes of certain descriptions may be properly entrusted to a Lay Judge, to the Bishop himself belong, *inquisitio, correctio, punitio, excessuum, seu amotio à beneficio*. Agreeably to this principle, the power of Deprivation is reserved by our Canons to the Bishop in person: and the same principle seems to apply to the case of Suspension, and to the infliction of any other censure which may affect a Clergyman's spiritual functions.

In pursuance of the foregoing Observations, we beg leave humbly to propose:—

1. THAT all Proceedings against Clerks, for offences subject to Ecclesiastical jurisdiction or cognizance, shall be had, at the election of the Promoter, where the Clerk is beneficed or licensed as a Curate, before the Bishop either of the Diocese in which he resides, or of that in which he is beneficed, or licensed as a Curate, or in which the alleged offence was committed; and when such Clerk shall not be beneficed or licensed as a Curate, then either before the Bishop of the Diocese in which he resides, or in which the alleged offence was committed.

2. That the Bishop shall hear the Case, with the assistance of one or more legal Assessor or Assessors, to be selected by himself.

3. That every such legal Assessor shall be either an Advocate in the Arches Court of Canterbury, or a Barrister at Law of five years standing.

4. That in case of any such Proceedings in the Diocese of Canterbury, the same shall be conducted within the said Diocese, before the Bishop of London, the Bishop of Winchester, and the Bishop of Rochester, or any one or two of them, to be appointed by Commission by the Archbishop of Canterbury; and such Commissioner or Commissioners shall hear the Case, with the assistance of a legal Assessor or Assessors, qualified as aforesaid, to be selected by himself or themselves.

5. That in case of any such Proceedings in the Diocese of York, the same shall be conducted within the said Diocese, before the Bishop of Durham, the Bishop of Carlisle, and the Bishop of Chester, or any one or two of them, to be appointed by the Archbishop of York, in the same manner and under the same regulations as last provided.

6. That in such Tribunal the Evidence shall be taken upon oath, *Vivâ voce*; provided, that in case of sickness or other unavoidable cause of absence on the part of any Witness (to be verified upon oath, and allowed by the Bishop, or Commissioner or Commissioners,) it shall be lawful to examine such Witness by Commission, to be issued from the Registry of the Diocese.

7. That, in all cases, either Party may appeal to the Archbishop of the Province, from the definite Sentence, or from any Decree having the force and effect of a definitive Sentence; subject to Regulations hereafter to be established.

8. That the Archbishop shall hear such Appeal with the Assistance of one or more of the Provincial Judges; and, if he shall think fit, with other legal assistance.

9. That every Appeal shall be heard upon the same evidence as was produced before the Bishop, and no other, unless the Appeal be grounded upon the rejection of legal evidence.

10. That the Archbishop to whom an Appeal shall be made shall have authority to remit the case, if he think fit, for further inquiry; and the Bishop or Commissioner or Commissioners, to whom any Case shall be so remitted, shall thereupon summon the Parties again, and take such further Evidence as shall be tendered on the points required to be further examined into, and any Evidence that the other Party may think proper to offer in answer thereto; and shall return the Case, with such additional Evidence, to the Archbishop, for his final decision thereon.

11. That no original Proceedings shall in any case be instituted or entertained, unless the crime or offence be charged to have been committed within three years previously to the commencement of such Proceedings; and that in all cases in which any crime or offence so charged shall not be proved to have been committed within such time, the Defendant shall be acquitted thereof.

12. That where the Proceedings shall be grounded upon the previous verdict of a Jury, or the Sentence of an Ecclesiastical Court, against the Party accused, for any offence proved to have been committed by him, the last-mentioned limitation of time shall not apply to prevent the commencement of Proceedings, or to control the power to entertain the same, and to give Judgment thereon; provided, that such Proceedings be commenced within three calendar months from the date of such Verdict or Sentence having been pronounced.

AND for the purpose of carrying these PROPOSITIONS into effect, we further humbly suggest the adoption of the following REGULATIONS:

1. THAT the preliminary Proceedings by a necessary Promoter shall be as at present.

2. That the preliminary Proceedings by a voluntary Promoter shall be grounded upon Information, on oath to be administered by a Surrogate, or by one of Your MAJESTY'S Justices of the Peace who shall be authorized to administer such oath.

3. That such information shall be lodged in the Registry of the Diocese, and shall forthwith be laid before the Bishop, who shall decide thereon, in the first instance, whether the Case is in his judgment proper to be proceeded with, or not.

4. That such delivery of the Information, as aforesaid, shall be considered as delivery to the Bishop, who shall signify his allowance or disallowance of proceedings to be instituted thereon, as soon afterwards as conveniently may be.

5. That in case the institution of Proceedings is allowed by the Bishop, such allowance shall be signified by indorsement on the said Information of the word "*Allowed*," in the hand-writing and with the signature of such Bishop; and that if the institution of Proceedings is disallowed, the same shall be signified by the indorsement of "*Disallowed*," in the form and manner aforesaid.

6. That in case of disallowance, the same shall be signified forthwith by the Registrar to the Promoter, who shall thereupon be at liberty to record in the Registry his intention to refer the same to the Archbishop of the Province, and shall take out a certified copy of the information and of the indorsement of Disallowance thereon, to be laid before the said Archbishop.

7. That the Promoter shall deliver the said copy of the information within Ten days, at the office of the Vicar General of the Archbishop, in order that the same may be laid before the Archbishop; who may, if he think fit, reverse the said Disallowance, and issue an order to the Bishop, as soon as conveniently may be, directing that the institution of proceedings be allowed by such Bishop, who shall thereupon allow the same accordingly.

8. That when the Bishop shall have signified his opinion that the Case is proper to be proceeded with, or the Archbishop shall have directed him to proceed therein, as provided in the last Regulation, a Summons or Citation, returnable at a certain time to be named therein, shall forthwith issue from the Registry of the Diocese in which such proceedings are to be instituted, calling upon the Party cited to appear and answer to articles to be exhibited against him.

9. That such Citation shall issue under the Seal of the Bishop of such Diocese, and shall contain—The name and style of the Bishop before whom, or before whose Commissioner or Commissioners, the Party is cited to appear;—the name and description of the Party cited;—the time and place at which he is to appear;—the nature of the offence



for which he is cited to answer;—and the name of the Party at whose instance he is cited.

10. That such Citation shall be served personally on the Party to be proceeded against, by showing him the same under seal, and leaving with him a copy thereof; but in case the Party cited cannot be found, such Citation shall be served by leaving a Copy thereof at his usual or last place of residence, and by affixing a Copy thereof upon the Church-door of the parish in which such place of residence shall be situated, and by leaving another Copy thereof with the officiating Minister, or one of the Churchwardens of the said Parish.

11. That the Citation shall be returned into the Registry of the Diocese on the day and at the time at which the same is made returnable, with an Affidavit of the manner in which the service thereof shall have been effected; which Affidavit may be sworn before a Surrogate, or one of Your Majesty's Justices of the Peace who shall be authorised to administer the necessary oath.

12. That the Proctor or Agent of the Promoter shall, at the time when the Citation is returned, exhibit his Proxy or authority, under the hand and seal of the Promoter, who shall be recorded in the Registry of the said Diocese; and all Assignations or orders made in the said Clause shall be binding upon the Promoter, in the same manner as if he had been personally present at the making thereof.

13. That at the time of the return of the Citation, the Promoter, or his Proctor or Agent, shall bring into and leave in the Registry the Articles containing the charges against the Party cited.

14. That the Party cited may appear either in person, or by a Proctor or other Agent lawfully appointed under his hand and seal; and such Proctor or Agent, when so appearing, shall be required to exhibit his Proxy or other authority from the Party principal; and the same shall be recorded in the Registry of the said Diocese.

15. That if the Party cited shall appear by his Proctor or Agent, all Assignations and Orders made in the said Clause shall be binding on such Party in the same manner as if he had been personally present at the making thereof.

16. That on appearance of the Party cited, a copy of the Articles shall be delivered to such Party, his Proctor or Agent.

17. That the Party cited shall be required to give an Issue in writing to such Articles, within a fortnight from the day on which a copy thereof shall have been so delivered.

18. That in case a negative Issue shall be given to the said Articles, the Party cited shall thereupon be required to declare whether he intends to give a defensive Allegation or not; and if he shall declare his intention to give such Allegation, he shall be required, at the same time to deliver his said Allegation into the Registry within two days, and a Copy thereof to the Promoter, his Proctor or Agent, within a fortnight, from the day on which such declaration shall have been made.

19. That upon such Allegation being brought into the Registry, or at the expiration of the time allowed for bringing in the same, a day shall be appointed, as near thereto as conveniently may be, for the hearing of the Cause.

20. That thereupon the Promoter and the Party cited shall respectively deliver into the Registry a List containing the names and descriptions and the places of residence of the Witnesses whom they intend to examine; and Summonses or Citations shall forthwith issue from the said Registry, in the name and under the Seal of the Bishop, requiring such persons respectively to attend at the time and place appointed for the hearing of the said Cause, and to be examined and give Evidence therein; provided that a further List of Witnesses may be delivered in, and further Summonses or Citations issued, at the discretion of the Court.

21. That in case any Witness shall neglect or refuse to obey any such Summons or Citation, or shall refuse to give Evidence or to be examined upon the hearing of the Cause, after payment or tender of a reasonable sum for expenses of attendance of such Witness, every person so offending, and having no sufficient excuse to be allowed by the Bishop, or the Commissioner or Commissioners, shall for every such offence forfeit and pay a sum not exceeding 50*l.* nor less than 5*l.*, which penalty shall be levied by virtue of a Warrant under the hand and seal of one of His Majesty's Justices of the Peace for the County in which such person so offending shall be resident, and which Warrant such Justice shall be authorized and required to issue on a Certificate under the hand and seal of the Bishop, or Commissioner or Commissioners, whose Summons or Citation shall have been disobeyed, being exhibited to him.

22. That if the Party cited shall not appear, either in person or by his Proctor or other Agent duly authorized, at the time assigned in the Citation, it shall be competent to proceed *ex parte*; and in case of the neglect of the Party cited to appear at a further day, to be then assigned to him for that purpose, of which due notice shall be given, an early day may be appointed for the hearing of the Cause, and Witnesses may be summoned and examined in support of the Articles, and final Sentence pronounced thereon, notwithstanding the absence of the Party cited.

23. That it shall be competent to the Bishop in all cases in which it may seem to him meet, to allow further time to the Party applying for the same.

24. That the Evidence received upon the hearing of the Cause shall be taken down in writing and at length, by the Registrar of the Court, or other officer or person to be appointed by him.

25. That the Sentence shall be in writing, and signed by the Bishop, or Commissioner or Commissioners, as the case may be; and shall be recorded in the Registry of the Diocese in which the Cause is heard.

26. That no Appeal shall be entertained unless lodged in the Registry within fourteen days after the date of such Sentence, and prosecuted within fourteen days more, by entering Notice of such Appeal in the office of the Vicar General of the Archbishop, and by using forthwith the necessary means for taking out an Inhibition on the Court below, and a Monition to transmit the Record of the said Proceedings to the office of the Vicar-General.

27. That in all cases of Appeal, Security shall be given for Costs in the amount of £150 by bond to the Archbishop.

28. That in case of Appeal on the part of the Defendant from any Sentence of suspension *ab officio* or *ab officio et beneficio*, or of deprivation, the Bishop of the Diocese in which the Benefice is situate shall, on production of a copy of the Sentence, be at liberty, by his special Order in writing to inhibit the Clergyman so suspended or deprived, from administering the Offices of the Church pending such Appeal, and to appoint a Curate to administer the same on the allowance of such salary as the Bishop shall think proper, and as he would be empowered to assign on the said Benefice if the Incumbent thereof were non-resident: and shall provide for the payment thereof in form and manner as by law prescribed for the payment of the Curates' salaries in cases of non-resident Incumbents who have been instituted since the 20th day of July 1813.

29. That it shall be lawful for the Archbishops of the respective Provinces, with such legal assistance as they may think fit, to make Orders and Regulations from time to time, touching the rules of Practice to be observed in the progress and conduct of such Proceedings as aforesaid, so far as the same are not provided for by the foregoing Regulations.

30. That due provision should be made by law for enforcing the execution of the Sentences to be given in pursuance of the above proposition.

31. That the Statute passed in the 27th year of George III.\* intituled, "An Act to prevent frivolous and vexatious Suits in Ecclesiastical Courts," whereby Suits for Fornication are limited to a period of eight months from the commission of the Offence, should be repealed.

FROM the earliest times it has been deemed fitting that the sanctity of places consecrated for the worship of God, or appropriated to the interment of the dead should be protected from violation either by actual breach of the peace, or the use of violent and abusive words tending to induce persons to commit a breach of it. Accordingly, from time immemorial the Ecclesiastical Court has been permitted to take cognisance of such offences, when committed in consecrated ground. Brawling.

There was a time when disturbances in the Church and Churchyard, from various trifling causes, were of frequent occurrence, and sometimes carried to great extremities, for the suppression of which the Legislature was induced to pass an Act in the reign of Edward VI.† which still remains unrepealed.

In the Preamble to this Act it is said, that "of late many outrageous and barbarous behaviours and acts have been used and committed by divers ungodly and irreligious persons by quarrelling, brawling, fraying, and fighting openly in Churches and Churchyards." And by the first Section of this Statute it is enacted, That those who by words only quarrel, chide, or brawl in any Church or Churchyard, shall be liable to suspension, that is to say, a Layman, *ab ingressu Ecclesiæ* and a Clerk from the ministration of his Office, for so long time as the Ordinary

\* 27 Geo. III. c. 44.

† 5 & 6 Edw. VI. c. 4



shall think proper, according to the degree of the offence committed.

By the second Section, persons striking or laying violent hands upon any other, either in a Church or Churchyard, shall be deemed excommunicate, and excluded from the fellowship of Christ's Congregation.

These offences, therefore, both by Common Law and Statute, are subject to Ecclesiastical Jurisdiction; but by an Act passed in the 53rd year of George III.\* in all cases where Excommunication is pronounced as part of the Sentence, the Ecclesiastical Court is empowered to assign any term of imprisonment not exceeding Six Months, all other consequences of Excommunication being taken away, and the imprisonment to be enforced by certifying the Excommunication and the term of imprisonment to His Majesty in Chancery.

At the time of the passing of the Act of Edward the Sixth, the fear of suspension *ab ingressu Ecclesie* might have been sufficient to restrain persons from any improper conduct in a Church or Churchyard; but in the present day, those who are the most likely to be guilty of such offences would entirely disregard this punishment. Excommunication too for smiting might at that period have been effectual, to prevent the frequent commission of this offence; but the legal consequences of such punishment the Legislature found it necessary to abolish; and though the imprisonment substituted is a much more effectual remedy, we do not think it desirable that any such punishment should be inflicted by the Ecclesiastical Court.

We therefore humbly recommend, that the Jurisdiction hitherto exercised by the Ecclesiastical Courts over Laymen, for these Offences, should be abolished; and that the Temporal Courts be authorised to take cognisance thereof as Misdemeanors, punishable by Fine and Imprisonment for any term not exceeding one year.

If the offence committed in consecrated ground is of a still more outrageous description, it falls under the provisions of the third Section of the before-mentioned Statute of Edward VI.

By this Section, persons maliciously striking any other with any weapon or drawing any weapon with intent to strike in a Church or Churchyard, shall upon confession or conviction by a Jury be adjudged to lose one ear; and if the offender has no ear, to be branded on the cheek with a hot iron, having the letter F on it.

The condemnation of a person guilty of striking or of drawing with intent to strike, to lose one of his ears, or to be branded on the face, is a sentence which we are persuaded would never be executed; and therefore such an enactment ought not to remain upon the Statute Book.

Should Laymen be guilty of any of the offences enumerated in this section, they will remain liable to be proceeded against at Common Law for a breach of the peace; and the circumstances under which the offence was committed being, as no doubt they will be, properly considered, punishments will be inflicted which will be more likely to prevent a recurrence of such offences than those imposed by this Statute.

For all the offences committed by word of mouth only, Clerks, we think, will be more properly punished according to the proceedings recommended by us in another part of this Report; and if a Clerk should be guilty of actual violence, we see no reason to exempt him from the same trial and punishment to which others would be liable.

For these reasons, we humbly submit to Your MAJESTY, that the Statute of Edward VI. should be repealed.

THE cognizance of Causes of *Defamation*, forms a part of the ancient Jurisdiction of the Ecclesiastical Courts, and is expressly sanctioned by the Statute *circumspecte agatis*.†

These Causes may be defined to be Suits, instituted by persons whose good fame is alleged to have been injured by some individual uttering words respecting them, importing that they have been guilty of incontinency. The person found guilty of this offence used to be directed to do *Penance* in the Church, there recanting his accusation; and condemnation in Costs also followed. In practice, however, of late years, the Courts of Arches and Consistory have very rarely required the performance of penance.

Causes of Defamation are now of unfrequent occurrence in the Court of Arches and Consistory of London; but they still prevail to a considerable extent in many of the Jurisdictions in the Country.‡

The proceedings in these Suits have occasioned much odium to the Ecclesiastical Jurisdiction; Imprisonment having in several instances taken place; either from the obstinacy of the party proceeded against, or his inability to obey the sentence of the Court by payment of costs.§

\* 53 Geo. III. c. 127.

† 13 Ed. I. Stat. 4.

‡ See Appendix (D.) No. 11. (Not here printed.)

§ See Appendix (D.) No. 12. (Not here printed.)

We are of opinion that the benefit which may sometimes arise from this mode of correcting the offence in question and its consequent prevention, is not commensurate with the evils resulting from the present exercise of this jurisdiction; and therefore we recommend that the cognisance of such Causes should be wholly withdrawn from the Ecclesiastical Courts.

We do not think, however, that persons, aggrieved by Defamation, should be left wholly without a remedy; for many cases may occur, in which the fame and character of an individual may be almost as deeply affected, by words charging incontinency, as by a written libel; and, therefore, we humbly suggest that it may be expedient, under restrictions to prevent abuse, to permit the parties aggrieved to resort to the Magistrates at the Petty Sessions, who may be invested with a power to punish such offences by fine and imprisonment to be limited.

If our proposition for instituting a new Tribunal for the correction of Clerks be adopted, and the cognisance of disturbances in the Church and Churchyard be transferred to other Courts, very little would remain on which the Criminal Jurisdiction of the Ecclesiastical Courts would, according to the present state of the Law, operate.

Criminal Jurisdiction at an end

We have already described the course of proceeding, and the mode of punishment, in causes of correction. It is competent to institute Criminal Proceedings for Incest, Adultery, and Fornication; but in the Arches Court and the Consistory of London, no such suit has been brought for a long series of years; in some of the country Courts they have been very rare. It may be greatly doubted whether any beneficial effects have resulted from these proceedings, or at least so beneficial as to counterbalance the odium they have excited, and the oppression which, in some few instances, has been exercised. We think that the cognisance of such offences cannot be advantageously conferred on the Provincial Courts; and, on the whole, we are of opinion, that these Prosecutions should be abolished. Incest is, however, a species of offence of so aggravated a character, that some remedy ought to be substituted; and it appears to us, that the correction of this grosser violation of morality and public decency might be, with propriety, transferred to the Courts of Common Law, the offence being made indictable as a Misdemeanor, to be punished by fine and limited imprisonment. The Court will have authority to take security for future good behaviour.

Should these measures be carried into execution, the Criminal Jurisdiction of the Ecclesiastical Courts may be entirely abolished.

WE have now brought under Your MAJESTY'S consideration the various Courts exercising Ecclesiastical Jurisdiction, and have set forth in detail the different subjects of which they are at present entitled to take cognizance.

Having humbly suggested the transfer of the whole Ecclesiastical Jurisdiction to the two Provincial Courts, and proposed very important alterations in the mode of trying some of the questions, which, as we submit, should still be subjected to those Courts; and having recommended the transfer of other matters to other Tribunals,—We will now direct our attention to some details, which, though of minor importance, are entitled to consideration.

Regulation necessary for carrying recommendations into effect.

For the purpose of carrying the more important alterations into effect, it will be proper, among other regulations,—That all fees on granting Probates and Administrations should be brought into a general Fund, in each Province respectively,—That the Judges and Officers of the different Ecclesiastical Courts should be remunerated by Salaries, in proportion to the trust and labour of their respective offices,—That they should discharge their duties in person and not by deputy,—That *Surrogates* should be appointed, in various places in each Province, to administer the necessary Oaths, in order to save the expense and delay of Commissions, unless the parties themselves should, in any particular case, prefer applying for a Commission.

Judges how to be appointed and paid.

Officers not to serve by Deputy.

As the Jurisdiction of the Provincial Courts will be confined to the decision of questions relating to Civil and Temporal Rights, and Trial by Jury will be introduced, it is submitted, that even if the recommendation of the Judges and Officers of these Courts were still to remain with the Archbishops respectively, it may perhaps be proper that the final appointment should only take place, upon being first confirmed by Your MAJESTY.

The regulation for the admission of Advocates, necessarily requiring that each member of the profession shall have received a liberal education, has been found productive of great advantage; but it is still open to this objection, that it postpones too long the commencement of professional practice; as it seldom happens that the degree of Doctor of Laws can be obtained until the age of twenty-seven or twenty-eight years.

Admission of Advocates accelerated.



We think it will be advisable that some Rules should be framed under which the period of admission may be accelerated; and, for that purpose, we recommend that every person who shall have taken the degree of Master of Arts or Bachelor of Laws shall be qualified to be admitted an Advocate, in the same manner, and under the same conditions and restrictions as persons are now qualified to be admitted Advocates, on having taken the degree of Doctor of Laws; provided that every such person applying to be so admitted, shall have entered his name, upon a proper stamp in the Registry of the Court of Arches as a Student, and an intended Candidate for admission as an Advocate, one year before his application; and provided also, that all Advocates having taken the degree of Doctor of Laws shall be entitled to precedence and pre-audience, over those who shall not have proceeded to that degree.

Admission  
of Proctors;  
no change.

With respect to the admission of Proctors, we see no reason to disturb the present practice.

With the alteration suggested as to Advocates, the present mode of admitting Advocates and Proctors appears to be well calculated to ensure the acquisition of such knowledge as may enable them to conduct those Causes which are the subjects of Ecclesiastical cognizance, with advantage to the suitors and to the public. And it may be added that, from the course of the proceedings and the nature of the business transacted in Doctors' Commons, the Proctors are necessarily brought under the constant observation of the Heads of the Profession, so that it is difficult for any attempt at malpractice to escape detection; but it should be mentioned to their credit, that instances of misconduct are of very rare occurrence.

The Advocates and Proctors of the Court of Arches are entitled to practice in the other Ecclesiastical Courts; and in the High Court of Admiralty upon being admitted by the Judge thereof. This connexion between the Ecclesiastical and Admiralty Jurisdictions has long subsisted, and probably owes its origin to the similarity of the form of proceedings in both Courts, and of the course of study necessary to qualify the Practitioners for the proper discharge of the duties entrusted to them. The study of the Ecclesiastical Law requires an accurate acquaintance with the principles of the *Civil Law*, upon which the law of the Admiralty is founded; and the Civilian is led to the investigation of those principles of general Jurisprudence by which the intercourse of Nations is governed, and the rights and obligations of belligerents and neutrals in time of war are defined.

In this point of view, the maintenance of these two branches of the Profession, in connexion with each other, has been always considered an object of importance; and as the Ecclesiastical business is that alone upon which, in time of peace, the practitioners must depend, it is humbly submitted that the alterations proposed to be made in the Practice and Constitution of those Courts should be considered with reference to this object; so that the general character of their proceedings may be preserved, whilst their efficiency, for the purposes for which they are designed, may be improved and increased by the amendments which it may be deemed expedient to apply to them.

A late Act of Parliament\* has given powers for establishing a Table of *Fees*, as well as for regulating the *Duties* of the Officers of the Courts in Doctors' Commons.

The Fees are those recommended by the Commissioners appointed to inquire into the Duties, Salaries, and Emoluments in Courts of Justice.† These steps already taken in consequence of the Act will, it is hoped, place all the matters over which a control is thereby given upon a proper footing.

By the same Statute, authority is given for making such Rules respecting the proceedings as may upon due consideration be deemed advisable for the better conducting of suits; and some Regulations have already been established, which have been found in practice very conducive to the better administration of justice.‡

The enactments of that Statute do not extend to the *Charges of Proctors* to their Clients, nor are such Charges regulated by any established Table of Fees; except in regard to the passing of Probates and Administrations without contest, or what is termed *Common Form Business*. The business which a Proctor transacts for his client in conducting a contested Suit, depends so much upon the circumstances of the case, and upon the instructions and directions given by the client himself, that it is hardly possible to frame a Table of Fees applicable to many items of such Charges; they are made upon the principle of a "quantum meruit pro opere et labore," and, as we

have before said, can only be recovered by an action at law. The Registrar, if desired by the parties, gives his opinion upon the several items of the bill; but that opinion is not binding either on Proctor or Client; nor can the Judge tax the bill accordingly, nor enforce the payment of it.

In respect to the Probates and Administrations passed in *Common Form*, without contest, it is to be observed that, when very heavy Stamp Duties had been laid, the charges proposed by the Proctors were submitted, in 1801, to the late Sir William Wynne, the Dean of the Arches and Judge of the Prerogative Court, who is reported, in a Return to the House of Commons,\* made by the Deputy Registrars, not to have stated any objection thereto; and they continue to be the charges still made. The Proctor who advances the money for the Stamp Duty, charges in consideration of the advance and the risk or delay of repayment a per-centage, according to the scale set forth in that Return. The other charges are of small amount—part of them is money paid by the Office Fees, which are regulated by a fixed Table; but the Stamp Duty and the per-centage above mentioned make the whole amount of the charge appear to be very great, although the real profit of the Proctor constitutes but a small portion of it.

IN all Suits, it is of course of extreme importance that the Orders and Decrees of the Court should be effectually enforced; but as the Law now stands in these Courts, justice is liable to be defeated in various ways, especially in Matrimonial Suits.

Process for  
enforcing  
Decrees and  
Orders.

By the Law and Practice in these Causes, save in some cases when the Wife has a separate income, the Husband is responsible for the Costs of the Wife, and may be required to pay them as they occur. He is also liable to pay Alimony *pendente lite*; and permanent Alimony, if the Wife succeeds in obtaining a Separation.

At the commencement of a Suit, it is in the power of a Party proceeded against to quit the kingdom; and thus a Wife, however culpable the conduct of the Husband may have been, is left without the means of support, and in some instances it may be wholly impracticable to persevere in bringing the Suit to a conclusion. During the pendency of proceedings, or after sentence obtained, the same consequences may follow.

The power of enforcing their orders at present vested in the Ecclesiastical Tribunals, is regulated by Statute.† The Court pronounces the individual who has failed to obey its orders, in Contempt, and afterwards signifies such Contempt to the Court of Chancery; whereupon a writ *De contemptum capiendo* issues, and the offender is committed to prison. From this *Process* all Peers, and it may be presumed all Members of the House of Commons, are exempt; but, even with respect to all other persons, it affords a very ineffectual remedy. The proceeding is so dilatory, that in all cases there is ample time for the individual to leave the kingdom, and thus set Justice at defiance; nor does the authority of any other Tribunal afford any assistance, save that after a Decree of *Separation*, and permanent *alimony* allotted, and in that case only, the Court of Chancery will, on application, grant a *Ne exeat regno*. The cases are extremely rare in which this assistance is really useful; for here, as in the preceding instance, the Party has full opportunity to escape from that jurisdiction before any such Writ can be procured.

In no case whatever, under any circumstances, can the *Property* of an individual be attached by the authority of the Ecclesiastical Courts, or by the assistance of any other Tribunal. In some Matrimonial Causes, very great injustice and hardship have followed from this defect of power; and in other descriptions of Causes similar consequences may follow, though not to the same extent.

We think that an effectual remedy ought to be applied, and that in Matrimonial Suits, when the particular circumstances require it, authority should be given to restrain the Party proceeded against from quitting the kingdom; and that in all cases of disobedience there should be power to attack the Party, and detain upon his property. It does appear wholly inconsistent with any sound principles of Jurisprudence, that exclusive right of adjudicating on certain subjects should be vested in any Court, and yet that Court be left without the means of carrying its decrees and orders into effect. We see no reason to expect that these additional powers, so essential to the purposes of Justice, will not be discreetly exercised: it is to be recollected that we proceed on the presumption that the Jurisdiction of all the Ecclesiastical Courts, save the Provincial Courts of Canterbury and York, will be abolished.

We are also of opinion that it will conduce to expedition, and the saving of expense, if the Processes of the Courts

\* 10 Geo. IV. c. 53.

† Dated 16th May 1823. Ordered to be printed by House of Commons 18th June 1823.

‡ See Appendix (D.) No. 3. (Not here printed.)

\* See Return of Deputy Registrars of Fees &c. Ordered by House of Commons to be printed 31st May 1825.

† 53 Geo. c. 3. 127.

Fees—  
Duties of  
Officers in  
Doctors'

Commons;  
Act to regu-  
late.

Proctors'  
charges.



of Canterbury and York should be rendered reciprocally operative in both Provinces.

We have considered the Provisions of a Bill, intituled, "A Bill for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland," which passed the House of Lords last Session, and was dropped in a late stage in the House of Commons. The proposed enactments contained in that Bill, would, if adopted by the Legislature, tend in a very essential degree to remove the evils to which we have adverted.

\* \* \* \* \*

Complaints against the Ecclesiastical Courts examined.

BEFORE concluding our Report, we think it right to notice some of the complaints which have been alleged against the Ecclesiastical Courts. It has been said that the proceedings in these Courts are attended with great expense and delay.

Expense and delay.

In respect of the first of these objections, we see no reason to believe, from the evidence which we have collected, so far at least as regards the Courts in Doctors' Commons, that the charges in Ecclesiastical Suits are higher than in other Courts, in similar cases of a complicated nature, where the proceedings are in writing.

One great source of expense has lately been removed, by taking off the Stamp Duties on Law Proceedings, which increased the Costs in a peculiar degree in the Ecclesiastical Courts.

The expense has not been occasioned by exorbitant Fees of the Officers and Ministers of the Courts at Doctors' Commons; for although the aggregate of Fees paid to the Officers in the Prerogative Court, or Registry, is very considerable, yet the amount arises from the increased quantity of business, and is extremely light on each individual Suitor, having by no means kept pace with the altered value of money.

Recently some Fees unimportant in amount, which were not strictly legal, were abolished; and all the Fees, as before observed, regulated according to the Report of the Commissioners appointed to inquire into that subject.

The Expenses, however, in all these Courts are necessarily considerable; partly on account of the mode of proceeding, and partly from the nature of the Causes.

\* \* \* \* \*

Abuse of Appeal for purpose of delay.

It is admitted, we believe, that in all Courts the right of Appeal may be made instrumental to great delay, expense and inconvenience; for it is obviously impossible, before the hearing, for any opinion to be pronounced, whether the appeal be prosecuted for good and substantial reasons, or merely for the sake of postponing the ultimate execution of the Decree. The only check which can be imposed is the responsibility of Counsel, under whose advice the Appeal is prosecuted, and a condemnation in the whole costs. In Matrimonial Suits we are afraid that it is incidental to the very nature of the Marriage state that vexatious Appeals should more frequently occur; as in cases where the Wife is proceeded against, and her adultery has been held to be proved, she has a double motive for appealing to a superior Jurisdiction, namely the continuance of Alimony *pendente lite*, and the consideration that the expense of the Appeal in ordinary cases must be borne by the Husband. Endeavours have been made to accelerate the progress of Causes; by certain Orders of Court made a few years ago, the Witnesses must be examined in the Vacation succeeding the Term in which the allegation to be proved is given, unless the *term probatory* is extended by the Court, upon special cause shown. These Orders have tended materially to expedite Causes which before, from delay in furnishing instructions to the Proctors, generally proceeded at a slower pace. Many short cases are now disposed of in a single Term; and it scarcely ever happens that a Cause ready for hearing at the end of a Term, goes off to a following Term.

Order made to prevent delay.

On the first day of each Term, all Causes in which no step has been taken to advance their progress in the course of the preceding Term, are publicly called by order of the Court; and, unless satisfactory reasons be assigned for the continuance of the proceeding, the suit is dismissed.

Referring to the above explanation, and to the Evidence which we have received on this point, we have reason to believe that Causes are brought to a conclusion in the

Ecclesiastical Courts in Doctors' Commons, as speedily as the Practice of those Courts, according to the form of proceedings at present established, will admit.

THERE are some miscellaneous matters connected with the Ecclesiastical system, which we will briefly notice.

Miscellaneous matters.

THE care of all the *Parish Registers* is by Law committed to the Incumbent or the Minister of the Parish. Of the importance of the due preservation of these Documents it is not necessary to speak.

Parish Registers.

By an existing Statute,\* Copies of all Parochial Registers are directed to be sent, at stated times, to the different Diocesan Registries.

In consequence of the imperfections in the details of this Act, and the want of adequate remuneration for the duties imposed, these Copies are not transmitted with regularity; nor are they, when received, so arranged as to admit of easy access.

In many instances also, the existing Registries have not accommodation adequate for the purpose; and if it be deemed expedient that the main provisions of this Statute should be carried into complete execution, we are of opinion that some further measures are indispensably requisite.

\* \* \* \* \*

IN some cases complaint has been made of the *Fees* taken by the *Clergy* for performing the Offices of the Church, for the erection of Monuments, and the making and opening of Vaults. Some regulations in these respects are advisable. Perhaps it would be expedient to leave all these matters to be settled by the Bishop of the Diocese, with the consent of the Incumbent and Vestry; and when these Fees are fixed, on a moderate scale, especially with reference to the necessary Rites of the Church, some legal mode of enforcing payment ought to be provided.

Fees of the Clergy.

\* \* \* \* \*

This Report has been drawn up on the supposition that the *Provincial Court of York* is to be retained; but it is proper to say, that a doubt has presented itself to our minds, whether the arrangement which we have proposed, for the improved administration of the Ecclesiastical Laws, would not be rendered more complete and effectual, if the contentious and Testamentary Jurisdiction now exercised by the Courts in the Province of York were transferred to the Metropolitan Courts of Canterbury. We do not, however, venture to offer a specific recommendation on this head.

Doubt's as to expediency of continuing the Provincial Jurisdiction of York.

IN so extensive an investigation, which has necessarily involved us in inquiries respecting questions of considerable difficulty, some diversity of opinion would unavoidably exist amongst us; but though some of us may still entertain doubts as to a few particulars, We, whose names are hereunto subscribed, have united in humbly offering to Your MAJESTY the Recommendations contained in this Report.

Conclusion.

W. CANTUAR.	(L.S.)
C. J. LONDON.	(L.S.)
W. DUNELM.	(L.S.)
J. LINCOLN.	(L.S.)
W. St. ASAPH.	(L.S.)
CH. BANGOR.	(L.S.)
TENTERDEN.	(L.S.)
WYNFORD.	(L.S.)
N. C. TYNDAL.	(L.S.)
J. NICHOLL.	(L.S.)
CHRIST. ROBINSON.	(L.S.)
HERBERT JENNER.	(L.S.)
C. E. CARRINGTON.	(L.S.)
STEPHEN LUSHINGTON.	(L.S.)
R. CUTLER FURGUSSON.	(L.S.)

Dated this  
15th day of February 1832. }

Received this 16th day of February 1832.  
BROUGHAM C.

\* 52 Geo. III. c. 146.



## HISTORICAL APPENDIX (XI).

### A List of the Reformation Statutes and subsequent Statutes relating to the Ecclesiastical Courts.

NOTE.—Those Statutes to which the number of a page is affixed will be found printed in full in the Historical Appendix (XII.) at the page of this volume indicated.

Date.	Sovereign.	Year of Reign.	Chapter.	Title.	Page, post.
1532	Henry VIII.	- 23	9	Statute of Citations - - -	209
"	"	- "	20	Annates - - -	210
1533	"	- 24	12	Statute of Appeals - - -	213
1534	"	- 25	19	Submission of the Clergy - - -	216
"	"	- "	20	Annates (2nd Statute) - - -	218
"	"	- "	21	Dispensations - - -	—
"	"	- 26	1	Supremacy - - -	—
"	"	- "	14	Nomination of Suffragans - - -	—
1545	"	- 37	17	Lay persons may exercise ecclesiastical jurisdiction.	—
1548	Edward VI.	- 2 & 3	1	Act of Uniformity - - -	220
1549	"	- 3 & 4	11	<i>Reformatio Legum</i> - - -	—
1552	"	- 5 & 6	1	Act of Uniformity (2nd Statute) - - -	223
1558	Elizabeth -	- 1	1	Supremacy - - -	224
"	" -	- 1	2	Act of Uniformity - - -	229
1562	" -	- 5	23	<i>De Excommunicato Capiendo</i> - - -	231
1640	Charles I. -	- 16	11	Repeal of 1 Eliz. c. 1. as to Commissioners and curtailing powers of spirituality.	—
1661	Charles II.	- 13	12	Repeal of 16 Car. 1. c. 11., so far as it curtails powers of spirituality.	—
1662	"	- 13 & 14	4	Act of Uniformity - - -	—
1676	"	- 29	9	Abolition of writ <i>de hæretico comburendo</i> .	—
1813	George III.	- 53	127	Writ <i>de contumace capiendo</i> - - -	233
1829	George IV	- 10	53	Duties of officers of ecclesiastical courts	—
1832	William IV.	- 2 & 3	92	Transfer of power of delegates to Privy Council.	236
"	"	- "	93	Enforcing process of contempts - - -	—
1833	"	- 3 & 4	41	Judicial Committee - - -	—
1840	Victoria -	- "	86	Church Discipline Act - - -	237
"	" -	- "	93	<i>De contumace capiendo</i> - - -	—
1843	" -	- 6 & 7	38	Judicial Committee - - -	—
1846	" -	- 9 & 10	59	Disabilities relief. Repeal of certain statutes.	—
1847	" -	- 10 & 11	98	Jurisdiction of ecclesiastical courts - - -	—
1854	" -	- 17 & 18	47	Oral evidence - - -	—
1855	" -	- 18 & 19	41	Abolition of suits for defamation - - -	—
1857	" -	- 20 & 21	77	Probate Act - - -	—
"	" -	- "	85	Divorce Act - - -	—
1860	" -	- 23 & 24	32	Abolition of suits for brawling in certain cases.	239
1874	" -	- 37 & 38	85	Public Worship Regulation Act - - -	243
1876	" -	- 39 & 40	59	Appellate Jurisdiction - - -	—



## HISTORICAL APPENDIX (XII.).

Reprint of the most important Statutes contained in the  
List given in the preceding Appendix and 34 & 35 Vict. c. 40.

NOTE.—These Statutes are, with the exception of the last two which are taken from the Queen's Printer's Edition, reprinted from the "Statutes Revised," repealed, obsolete, or expired clauses, or parts of clauses being inserted in the case of the earlier Statutes from the edition of the Record Commission, and in the case of those after Elizabeth from the Queen's Printer's Edition. The inserted passages are enclosed within double asterisks. Those Statutes from the Record Commission Edition which are here given were originally taken from the Inrolments certified and delivered into Chancery, the corrections in the foot notes marked O being derived from the original Acts preserved in the Parliament Office.

## 23 HENRY VIII. CHAPTER IX.

AN ACTE that no psonne shalbe cited oute of the Dioç where he or she dwelleth excepte in  
Etayne cases.

Evils of un-  
due cita-  
tions in the  
spiritua  
courts;

WHERE greate nombre of the Kinges subjectes aswell men wyves &vauntes as other the Kynges subjectes dwelling in dyvers diocesses of this realme of England and of Wales, heretofore have ben at many tymes called by citacions and other pcesses compulsaries to appere in the Arches Audieñce and other high courtes of the archebysshopps of this realme, farre frome and oute of the diocese where suche men wives &vauntes and other the Kynges subjectes ben inhitaunt and dwelling; and many tymes to aunswere to surmysed and feyned causes and suite of defama- cion, withholding of tithes and such other like causes and matters which have byn sued more for malice and for vexacion than for any juste cause of suite; and where Etificate hath byn made by the somonor apparitor or any suche light litteratt pson that the ptie agaynst whome any suche citacion hath ben awarded hath be cited or somoned, and therupon the same partie so Etified to be cited or somoned hath not appered accordyng to the certificate, the same partie therfore hath ben excommunicated or at the leest suspended from all dyvyne &vice: And therupon before that he or she coulede be absolved hath be compelled not onely to paye the fees of the courte whereunto he or she was so called by citacion or other pcesse amountyng to the some of ij s. or xx d. at the leest, but also to paye to the somonor apparitor or other light litteratte pson by whome he or she was so Etified to be somoned for evey myle beyng distaunte frome the place where he or she than dwelled unto the same courte wherunto he or she was so cited or somoned to appere, two pence; to the greate charge and impoÿsshement of the Kinges subjectes and to the greate occasion of mysbehaviour and myslyving of wyves women and &vauntes and to the greate impeyrement and diminucion of thir good names and honesties: Be it therfore enacted by the King our soÿaigne lorde with the assent of the lordes spual and temporall and the comons in this psent parliament assembled and by

auctoritie of the same, that no man psonne shalbe frome hensforth cited or somoned or otherwise called to appere by hymself or herself or by any pcuratour before any ordinarie archedeacon comissarie official or any other judge spual out of the diocese or peculiar jurisdiccioñ where the psonne which shall be cited somoned or otherwise as is above said called, shalbe inhabiting and dwelling at the tyme of awarding or goyng forth of the same citacion or somons; excepte that it shalbe for in or uppon any of the cases or causes hereafter written, that is to saye, for any spual offence or cause comitted or don, or omitted forslewed or neglected to be done contrary to right or duetie, by the bysshopp archedeacon comissarie official or other [psones<sup>1</sup>] having spual jurisdiccioñ or beyng a spual judge, or by any other psonne or psonnes within the diocese or other jurisdiccioñ wherunto he or she shallbe cited or otherwise lafully called to appere and aunswere; and except also it shalbe by or uppon matter or cause of appell or for other lawfull cause wherin any partie shall fynde hymself or herself greved or wronged by the ordinarie judge or judgez of the diocese or jurisdiccioñ, or by any of his substitutes officers or ministers after the matter or cause there first comensed and begonne to be shewed unto the archebisshoppe or bisshop or any other havyng peculier jurisdiccioñ within whose pvince the diocese or place peculiar is; or in case that the bisshop or other imediate judge or ordinarie dare not or will not convente the partie to be sued before hym; or in case that the bisshop of the diocese or the judge of the place within whose jurisdiccioñ or before whome the suite by this Acte shuld be comensed and psecuted, be partie directly or indirectly to the matter or cause of the same suite; or in case that any bisshop or any inferior judge havyng under hym jurisdiccioñ in his owne right and title or by

none shall  
be cited out  
of the  
diocese  
wherein he  
dwells;

except for  
spiritual  
offences;

or in cases  
of appeal;

or on negli-  
gence or  
interest of  
the judge;  
or at the  
instance of  
inferior  
courts:

<sup>1</sup> psone O.



Penalty on  
ordinaries  
offending,  
double  
damages  
and costs;  
and ten  
pounds.

cōmission, make request or instaunce to the arche-  
bisshopp bisshopp or other supior ordinary or judge,  
to take treate examyn or deſmyne the matter before  
hym or his substitute, and that to be done in cases  
only where the lawe civile or canone dothe affirme  
execucion of suche request or instaunce of jurisdiccio  
to be lawfull or tollerable, upon peyne of forfaiture to  
eſy psonne by any ordinary cōmissary official or sub-  
stitute by vertue of his office or at the suite of any  
psonne to be cited or otherwise sōmōned or called  
contrary to this Acte, of double damages and costes for  
the vexacion in that behalff susteyned, to be recoſed  
agaynst any such ordynarie cōmissarie arededecon  
officiall or other judge as shall awarde or make pcesse  
or otherwise attempte or p̄cure to do any thing con-  
trarie to this Acte, by accion of dette or accion upon  
the case according to the course of the cōmon lawe of  
this realme in any of the Kinges high courtes, or in  
any other competent tempall courte of recorde by  
originall writte of dette biil or playnt, in which accion  
no p̄teccion other than suche as shalbe made under the  
Kinges greate seale and signed with his signe manuell  
shalbe allowed, neyther any wager of lawe nor essoyne  
shalbe admitted; and upon peyne of forfaiture for eſy  
psonne so somoned cited or otherwise called as is  
abovesaid to answer before any s̄pual judge out of  
the diocese or other jurisdiccio where the said  
psonne so dwelleth or is resident or abiding tenn  
poundes sterling; the one halff therof to be to the  
Kinge oure soſaigne lorde and the other halff to any  
psonne that will sue for the same in any of Kinges  
said courtes or in any other the said temporall courtes  
by writte informacion bill or playnte; in whiche  
accion no p̄teccion shalbe allowed nor wager of lawe  
nor essoyne shalbe admitted.

PROVIDED alwayes that it shalbe lefull to eſy arche-  
busshoppe of this realme to call cite and somon any  
pson or psonnes inhabiting or dwelling in any buss-  
hopps diocese within his pvince for causes of heresie,  
if the bisshopp or other ordinarie immediate therunto  
consent, or if the same bisshoppe or other immediate  
ordinarie or judge do not his duetie in punysshement  
of the same.

PROVIDED also that this Acte shall not extende in  
anywise to the prerogative of the Moost Reſend  
Father in God the Archebisshopp of Canterbury or  
any of his successours of or for calling any pson or  
psones oute of the diocese where he or they be in-  
habiting dwelling or resident for p̄bate of any testa-  
ment or testaments: Any thing in this Acte conteyned  
to the contrary notwithstanding.

AND BE IT FURTHER ENACTED by auctoritie afore-  
said that no archebisshopp nor bisshoppe ordinary  
officiall, cōmissarie or any other substitute or minister  
of any of the said archebisshopp bisshoppes arche-  
deacons or other havyng any s̄pual jurisdiccio, at  
any tyme frome the feaste of Ester next cōmyng,  
shall aske demaunde take or receyve of any of the  
Kinges subjectes, any sōme or sōmes of money for the  
seale of any citacion, after the said feast to be awarded  
or obteyned, than onely thre pence sterlinge, upon  
the peynes and penalties before limited conteyned and  
ex̄pressed in this p̄sent Acte to be in like fōme recoſed  
as aforesaid.

(1) PROVIDED alwaies that this Acte be not in any-  
wise hurtfull or p̄judiciall to the Archebisshopp of  
Yorke, nor to his successours of for or concerning  
p̄bate of testaments within his pvince and jurisdiccio  
by reason of any p̄rogatife: Any thing in this Acte  
to the contrary thereof notwithstanding.

II.  
Proviso for  
archbishops  
in case of  
heresy.

III.  
Proviso for  
probates by  
archbishop  
of Canter-  
bury.

IV.  
Fees on seal-  
ing cita-  
tions.

V.  
Proviso for  
probates by  
archbishop  
of York.

## 23 HENRY VIII. CHAPTER XX.

### AN ACTE cōcēnyng restraynt of payment of Annates to the See of Rome.

Extortions  
and oppres-  
sions of the  
court of  
Rome by  
receipt of  
annates or  
first-fruits  
of bishop-  
ricks, &c.

FORASMOCHE as it ys well p̄ceyved by long approved  
expiencie that grete and inestimable sōmes of money  
been daylye conveyed out of this realme to the im-  
poverisshement of the same, and specially suche sōmes  
of money as the Popes Holynes his p̄decessours and  
the courte of Rome by long tyme have heretofore  
taken of all and singular those s̄pual psons which have  
been named elected p̄sented or postulated to be arche-  
bysshoppes or bysshoppes within this realme of Eng-  
land under the title of annates otherwise called furst  
fruytes; which annates or first fruytes heretofore have  
been taken of eſy archebisshoppiche or bysshoppiche  
within this realme by restraynt of the Popes bulles for  
confirmacons eleccons admyssions postulacons pvisions  
collacons disposicons institucons installacons investi-  
tures orders holye benediccons palles or other thinges  
requyste and necessary to thatteynyng of those their  
p̄mocons, and have been compelled to paye before  
they coulde attayne the same, great sōmes of money  
before they myght receyve any parte of the fruytes  
of the seid archebysshoppiche or bysshoppiche where-  
unto they were named elected p̄sented or postulated;  
by occasion wherof not onely the treasour of this  
realme hath been gretely conveyed out of the same,  
but also it hath happened many tymes by occasion of

deth unto suche archebisshoppes and bysshoppes so  
newely p̄moted, within two or thre yeres after his or  
their consecracon, that his or their frendes by whome  
he or they have been holpen to advaunce and make  
payment of the seid annates or furst fruytes have been  
therby utterly undoon and impoverisshed; and for  
because the said annates have risen growen and en-  
creased by an uncharitable custome grounded uppon  
no juste or good title, and the paymentys therof  
opteyned by restraynt of bulles untill the same annates  
or first fruytes have been payed or sewrtie made for  
the same, which declareth the seid paymentys to be  
exacted and taken by constraynte ayenst all equitie and  
justice: THE NOBILL men therfore of this realme and  
the wise sage poletique comons of the same assembled  
in this p̄sent Parliament, considering that the courte  
of Rome cesseth not to taxe take and exacte the seid  
great sōmes of money under the title of annates or first  
fruytes as ys aforesaid to the great damage of the seid  
prelates and this realme, which annates or first fruytes  
were first suffered to be taken within the same realme  
for thonelye defence of Cristen people ayenst thin-  
fideles, and nowe they be claymed and demanded as

<sup>1</sup> In a separate schedule annexed to the original Act.



mere duetie onely for lucre ayenst all right and conscience, insomuche that yt ys evidently knowen that there hath passed out of this realme unto the court of Rome sithen the secunde yere of the reign of the most nobill prynce of famous memory King Henry the vij<sup>th</sup> unto this p̄sent tyme, under the name of annates or first fruytes payed for the expediçō of bulles of archebisshop̄riches and byssop̄riches, the sōme of eight hundred thowsand duckattys amounting in st̄lyng money at the lest to eight score thousande poundes, besides other greate and intollerable sōmes which have yerely ben conveyed to the seid courte of Rome by many other wayes and meanes, to the greate impoverishment of this realme; AND albe it that our seid sovaign lorde the Kyng and all his naturall subjectys aswell sp̄uall as temporall ben as obedient devoute catholique and humble children of God and Holie Church as any people be within any realme cristened; YET the seid exacçōs of annates or first fruyttes be so intollerable and importable to this realme that it is considered and declared by the hole bodye of this realme nowē r̄p̄sented by all the astatys of the same assembled in this p̄sent Parliament, that the Kynges Highnes before Almyghty God ys bounde as by the duetye of a good Xp̄en prynce for the conservaçō and p̄servaçō of the good astate and cōmyn welth of this his realme to doo all that in hym ys to obviate repress and redresse the said abusions and exacçōs of annates or first fruytes; and because that dyv̄s p̄lates of this realme been nowē in extreme aeger and in other debilitēes of their bodies, so that of lykelyhod bodely deth in shorte tyme shall or may succede unto theme; by reason wherof great sōmes of money shall shortely after their dethes be conveyed unto the courte of Rome for the unreasonable and uncharitable causes abovesaid, to the univ̄sall damage p̄judice and impoverishment of this realme, if spedye remedye be not in due tyme p̄vided; IT is therefore ordeyned establisshed and enacted by auctoritie of this p̄sent Parliament that the unlauffull paymentys of annates or furst fruytes and almaner contribuçōs for the same, for any archebysshop̄riche or bysshop̄riche or for any bulles hereafter to be opteyned from the courte of Rome to or for the forsaid purpose and intent, shall from hensforth utterly cesse and no suche hereafter to be payed for any archebisshop̄riche or bysshop̄riche within this realme other or otherwise then hereafter in this p̄sent Acte ys declared; AND that no maner p̄son nor p̄sons hereafter to be named elected p̄sented or postulated to any archebisshop̄riche or bysshop̄riche within this realme shall pay the seid annates or first fruyttes for the seid archebysshop̄riche or bysshop̄riche nor eny other maner of sōme or sōmes of money pencions or annuities for the same, or for any other like exacçō or cause uppon payne to forfayte to our seid sovaign lorde the King his heyres and successours almaner his goodys and catallys for ev̄ and all the temporall landys and possessions of the same archebisshop̄riche or bysshop̄riche during the tyme that he or they which shall offende contr̄y to this p̄sent Acte shall have possede or enjoye the archebisshop̄riche or bishop̄riche, wherfore he shall so offende contr̄ye to the fourme aforesaid.

II. AND furthermore it is enacted by auctoritie of this p̄sent Parliament that ev̄y p̄son hereafter named and p̄sented to the courte of Rome by the Kyng or any of his heyres or successours to be bysshop̄ of any see or dioces within this realme, hereafter shalbe letted deferred or delayed at the courte of Rome from any

such bysshop̄riche wherunto he shalbe so p̄sented, by meane of restraynt of bulles apostolique and other thinges requisite to the same; or shalbe denyed at the courte of Rome uppon convenyent sute made, any maner bulles requisite for any of the causes before-said; ev̄y suche p̄son so p̄sented may be and shalbe consecrated here in Englonde by tharchebisshop̄ in whose p̄vynce the seid bysshop̄riche shalbe, so alwaye that the same p̄son shalbe named and p̄sented by the Kyng for the tyme being to the same archebysshop̄; and yf any p̄son being named and p̄sented as is aforesaid to any archebisshop̄riche of this realme making convenient sute as is aforesaid, shall happen to be letted deferred delayed or otherwise distourbed from the same archebisshop̄riche for lacke of palle, bulles, or other thinges to him requysite to be opteyned in the courte of Rome in that behalf; that then ev̄y suche p̄son so named and p̄sented to be archebisshop̄ may be and shalbe consecrated and invested after p̄sentaçō made as is aforesaid, by any other two bysshopes within this realme whome the Kinges Highnes or any of his heyres or successours Kynges of Englonde for the tyme being will assigne and appoynte for the same, according and in lyke man̄ as dyv̄s other archebisshopes and bysshopes have been heretofore in auncient tyme by sondry the Kinges most noble p̄genitours made consecrated and invested within this realme: AND that ev̄y archebisshop̄ and bysshop̄ hereafter being named and p̄sented by the Kinges Highnes his heyres or successours Kynges of England and being consecrated and invested as is aforesaid, shalbe installed accordynglye and shalbe accepted taken reputed used and obeyed as an archebisshop̄ or bysshop̄ of the dignyte see or place whereunto he so shalbe named p̄sented and consecrated requyred, and as other like prelates of that provynce see or dioces have been used accepted taken and obeyed, which have had and opteyned completely their bulles and other thinges requysite in that behalf from the court of Rome; and also shall fully and entyerly have and enjoye all the sp̄ualties and temporalities of the said archebisshop̄riche or bisshop̄riche in as large ample and beneficiall maner as eny of his or their p̄decessours had and enjoyed in the seid archebisshop̄riche or bisshop̄riche satisfyng and yelding unto the Kyng our sovaign lorde and to his heyres or successours Kynges of England all suche dueties rightys and interestys as before this tyme had been accustomed to be payed for any suche archebisshop̄riche or bysshop̄riche according to the auncient lawes and customes of this realme and the Kinges p̄rogatif royall.

AND to tintent our seid Holye Father the Poope and the courte of Rome shall not thinke that the paynes and labours taken and hereafter to be taken aboutys the writing sealing opteynyng and other busynesses susteyned and hereafter to be susteyned by the officers of the seid courte of Rome for and aboute the expediçō of any bulles hereafter to be opteyned or had for any suche archebisshop̄riche or bysshop̄riche shalbe irremunerated, or shall not be sufficiently and condignely recompensed in that behalf, and for their more redy expediçō to be had therein; IT is therefore enacted by the auctoritie aforesaid that ev̄y sp̄uall p̄son of this realme hereafter to be named and presented or postulated to any archebisshop̄riche or bysshop̄riche of this realme shall and may lauffully pay for the writing and opteynyng of his or their seid bulles at the courte of Rome and ensealyng the same with leede to be had without payment of any annate

All payment of such annates shall cease on pain of forfeiture, by the payer, of all his goods, &c.

II. How bishops, denied the requisite bulls at Rome, may be consecrated in England.

III. What sums may be paid for obtaining such bulls at Rome.



furst fruyttes or other charge or exaccon by hym or theym to be made yelden or payed for the same, fyve poundys stlyng for and after the rate of the clere and hole yerely value of evy hundreth poundes sterling above all charges of any suche archebisshoþriche or bysshoþriche or other money to the value of the seid fyve ponde for the clere yerely value of evy hundreth poundes of evy suche archebisshoþriche or bysshoþriche and not above nor in any other wise. Any thyng in this þsent Acte before written notwithstanding.

The King empowered to compound with the Pope to moderate such annates, &c.

AND forasmuche as the Kynges Highnes and this his High Courte of Parliament nother have nor doo intende to use in this or any other like cause, any maner of extremyte or violens before gentill curteyse and frendely wayes and meanes fyrst approved and attempted, and without a veray great urgent cause and occasion yoven to the contrary, but pryncipally coveting to disorden this realme of the seide great exaccons and intollerable charges of annates and first fruyttes have therfore thought convenient to comytte the fynall order and determynacon of the þmysses in all thynges unto the Kynges Highnes, so that yf it may seme to his high wisdome and moost prudent discrecon mete to move the Popes Holynes and the courte of Rome amycablye charitablie and reasonable to compounde other to extinct and make frustrate the paymentys of the said annates or first fruytes, or ellys by some frendlie lovyng and tollerable composicon to moderate the same in such wise as may be by this his realme easelye borne and susteyned ; THAT then those wayes and composicons ons taken concluded and agreed bitwen the Popes Holynes and the Kynges Highnes shall stonde in strenght force and effecte of a lawe inviolablye to be observed.

IV.  
The King empowered to give or withhold his assent to this Act by letters patent, &c.

AND it ys also further ordeyned and enacted by the auctoritie of this þsent Parliament, that the Kynges Highnes at any tyme or tymes on thisside the feast of Easter, which shalbe in the yere of our Lord God a thousand fyve hundreth and thre and thrytty or at any tyme on thisside the begynnyng of the next Parliament, by his fres patentys under his great seale to be made and to be entered of recorde in the rolle of this þsent Parliament may and shall have full power and libertie to declare by the seid fres patentys, whether that the þmisses or any parte clause or matier therof shalbe observed obeyed executed pfourmed and take place and effect as an Acte and statute of this þsent Parliament or not ; so that yf his Highnes by his seid fres patentys before the expiracon of the tmes above lymytted therby, doo declare his pleasure to be that the premysses or any parte clause or matter therof shall not be put in execucon observed contynued nor obeyed, in that case all the seid þmysses or suche parte clause or matter therof as the Kynges Highnes so shall refuse disasferme or not ratifye shall stonde and be from thensforth utterly voide and of noon effect ; and in case that the Kynges Highnes before the expiracon of the tmes afore þfixed, doo declare by his seid fres patentys his pleasure and determynacon to be, that the seid premisses or evy clause sentence and parte thereof, that ys to say, the hole or suche parte therof as the Kynges Highness soo shall afferme accept and ratefie shall in all poyntes stonde remayne abide and be put in due and effectuell execucon according to the purporte teanour effect and trewe meanyng of the same, and to stande and be from thensforth for ev after as ferme stedfast and avayleable in the lawe as though the same had been fully and pftylye stablissed

enacted and confirmed to be in evy parte therof immediately holye and enterly executed in like maner fourme and effecte as other Actes and lawes the which been fully and determynatly made ordeyned and inacted in this þsent Parliament. (1)

AND if that uppon the foresaid reasonable amycable and charitable wayes and meanys by the Kynges Highnes to be experimented moved and compounded or otherwise approved, it shall and may appere or be seen unto his Grace that this realme shalbe contynuallye burdonned and charged with this and suche other intollerable exaccons and demaundys as heretofore it hath ben ; and that theruppon for contynuaunce of the same, our seid Holy Father the Poope or any of his successours or the courte of Rome will or doo or cause to be doon at any tyme hereafter so as is above rehersed, unjustlie uncharitably and unreasonablye vexe inquiet molest trouble or greve our seid sovaign lorde his heyres or successours Kynges of England or any of his or their spirituall or lay subjectes or this his realme, by excōmunicacōn excōmengement interdicōn or by any other pcesse censures cōpulsories wayes or meanes ; BE YT ENACTED by the auctoritie aforesaid, that the Kynges Highnes his heyres and successours Kynges of England and all his spūall and lay subjectys of the same, without any scripull of consciens shall and may lafully to the honour of Almyghty God, the encrease and contynuaunce of vertue and good example within this realme, the said censures excōmunicacōns interdicōns compulsories or any of theym notwithstanding, mynister or cause to be mynistered thoroughout this seid realme and all

V.  
In case of any interdict, &c. by the Pope, divine service shall continue.

<sup>1</sup> The original Act is not preserved among the other Acts of this year at the Parliament Office, Westminster. The royal assent was given by letters patent of 9 July 25 Hen. VIII. as appears by the following entry on the roll in Chancery :

"Cui quidem Bille pñce & ad plenū intellē p dēm dñm Regem ex assensu & auctoritate Parliamenti pñci tali est responsum ; Le Roy le volt.

"MEMORAND' quod nono die Julii, anno regni Regis Henrici octavi vicesimo quinto, Idem dñs Rex per fñas suas patentes sub magno sigillo suo sigillať, actum pñcē ratificavit & confirmavit, & actui illo assensum suū regiū dedit put p easdem fñas patentes ejus tenor sequit' in hec vba magis apte constat.

"Rex Omibz ad quos, &c., Salutem. Inspeximus quendam actum editum in Parlamento nño inchoato vñcio die Novēbr anno regni nñi vicesimo primo & abinde p dñsas progacōes progat & adhuc continuat ; ejus quidem actus tenor sequit' in hec vba : Forasmoeche [repeating the Act verbatim from beginning to end] in any manuer of wise. Sciatis qđ Nos Deum p oculis fñentes ac cōmodum pficū & utilitatem regni nñi & subditoz nñoz put cura regali astringim' intime considerantes, actum pñcē ac omia & singula in eodem contenť & supius specificat p nob hereditibz & successoribz nñis Ratificavim' acceptavim' approbavim' & confirmavim' ac p pñsentes ratificam' acceptam' approbam' & confirmam' & actui illo regiū nñm assensum dam' : Nec non actū illum ac omes et singulas clausulas et sentencias in eodem contenť p cōi utilitate et proficuo regni nñi observari obediri ac in execuconem poni & demandari volum' deñm' declaram' & precipim', p pñsentes ratam & gratam fñentes & fñitur totum & quicquid in eodem actu continet'. IN CUJUS rei, &c. T. R. apud Westm nono die Julii anno r. sui vicesimo quinto."

The ratification of the Act restraining the payment of annates to the see of Rome. 34.



other the domynions and territories belonging or apperteyning thereunto, all and all maner sacramentys sacramentallys seremonies or other devyne ſvice of Holye Church or eny other thing or thinges necessarie for the helthe of the soule of mankynde as they heretofore at any tyme or tymes have been vertuouſly uſed or accuſtomed to do within the ſame ; and that no

maner ſuche cenſures excōmunicacōns interdicōns or any other proces or compulſories ſhalbe by any of the prelates or other ſpūall fathers of this region ne by any of their mynisters or ſubſtitutes, be at any tyme or tymes hereafter publiſhed executed nor devulged nor ſuffered to be publiſhed executed or devulgyd in any maner of wiſe.

Prelates shall not publish such interdict.

24 HENRY VIII. CHAPTER XII.

AN ACTE that the Appeles in ſuche Caſes as have ben uſed to be purſued to the See of Rome ſhall not be from hensforth had ne uſed but wythin this Realme.

The pre-eminence, power and authority of the King of England;

WHERE <sup>(1)</sup> by dyvers ſundrie olde autentike histories and cronicles it is manifeſtly declared and expreſſed that this realme of Englonde is an impire, and ſo hath ben accepted in the worlde, goṽnd by oon ſupreme heede

and King having the dignitie and roiall eſtate of the imperiall crowne of the ſame, unto whome a body politike compacte of all ſortes and degrees of people, divided in termes and by names of ſpūaltie and tein-

<sup>1</sup>The Commissioners are indebted to L. T. Dibdin, of Lincoln's Inn, Esquire, for the following copy of the preamble of this Statute, as it appears in a draft Bill preserved among the Cotton MSS. [Cleopatra E. VI. fo. 185 *et seq.*] in the British Museum. The words italicised are omitted in the Act as passed; the gaps indicate places where words not in the draft are contained in the Act. The interlineations and corrections are believed to be, without doubt, in the handwriting of Henry VIII.

“Where by dyvers ſundrie olde authentike histories and Cronicles it is manifeſtly declared and expreſſed that this realme of Englonde is an Impier and ſo hath been accepted in the worlde governed by one ſuprem hed and King havyng the dignite and royall eſtate of the imperiall crowne of the ſame unto whom a bodie poletike compact of all ſortes and degrees of people divided in termes and by the names of Spiritualtee and temporaltee ben bounden and owen to bere next to god a naturall and humble obedience. He being alſo inſtitute and furniſhed by the goodnes and ſufferaunce of almightie god with plenarie hole and entier power premynence auctorite prerogatif and iuriſdiction to render and yelde iuſtice and fynal determynation to all manner of folks reſiaints or ſubiects within this his realme in all cauſes matiers debats and contencons happening to occurre inſurge or begynne within the lymyts thereof without reſtreynthe *appele* or provocacion to any foreyn princes or

but wonly by negligence or usurpation  
as we take it and estimate

potentats of the worlde. <sup>Λ</sup> In confirmation whereoff dyvers *Inſomoch that dyvers of the kings moſt royall progenytours kings of this realme and Impier by the epiſtoles from the ſee of Rome have ben named called and reputed the vicars of god within the ſame and in their tymes have made and deviſed ordennances rules and ſtatuts conſonant unto the lawes of god by their pryncelie power auctorytie and prerogatif royall as well for the due obſerving and executing of things ſpirituall as temporall within the lymyts of th'imperiall crowne of this realme. So that no worldeſie lawes ordennances iuriſdictions or auctoritee of any perſon at the begynnyng of the catholike faith nor long after was practiſed experymented or put in execution within this realme but onlie ſuche as was ordeyned made deryved and depended of the imperyall Crowne of the ſame, for when any cauſe of the law devyne happened to cum in queſtion or of lerning . . . then . . . it . . . was declared interpret and ſhewed by that parte of the ſaide bodie politike called the ſpiritualtie now being uſuallie called the Engliſſhe church, which alweyes hath ben reputed and*

also founde of that ſorte that both for knowlege integryte and ſufficiencie of nomber it hath ben alwayes thought and is alſo at this hower ſufficient and mete of it ſelf without the inter-  
exterior

medling of any other perſon or perſons to declare and determyne all ſuche doubts and to adminiſter all ſuche offices and duties as to their rowme doth apperteyn, for the due adminiſtracion whereof and to kepe them from corrupcion and ſynſter affection, the King's moſt noble progenitours and anteceſſours of the Nobles of this realme hath ſufficiently indued the ſayde church both with honour and poſſeſſions, And the lawes temporal for tryall of propertee of londs and goods and for the conſervacion of the people of this realme in unyte and peas without ravyn or ſpoyle was and yet is adminiſtered adiuged and executed by ſundrye Judges and Miniſters of the other partie of the ſaide bodie poletike called the temporaltie and both their auctorytee and iuriſdictions *ſomtyme* conioyne together *either to helpe other* in due adminiſtracion of iuſtice *in things myxt, and in this manner of wiſe procedeth the iuriſdiction ſpirituall and tempo-*

and of and frome the ſayd imperiall  
croune and non otherwyſe

*rall of this realme.* <sup>Λ</sup> And where the kings moſt noble progenitours and the Nobilitie and comons of this realme at dyvers and ſundrie parliaments as well in the tyme of King Edward the firſt Edward the IIIde Richard the ſeconde Henry the IIIth and other noble Kings of this realme made ſundry ordennances lawes ſtatuts and proviſions for the intier and ſure conſervacion of the prerogatives libertees and preemynences of the ſaide Imperiall crowne of this realme and of the ſaide iuriſdictions ſpūall and temporall depending of the ſame to kepe it from the Annoyance as well of the See of Rome as

from the <sup>stet</sup> *usurped* auctorytee of other foreyn potentats attempting the dymynucion or violacion thereof as often and from tyme to tyme as any ſuch *usurpacions* annoyance or attempt might be known or eſpied The ſaide good *holſome* ſtatuts and ordennances notwithstanding . . . . .  
. . . . . and ſithen the making of the ſame . . .  
. . . . . Dyvers and ſundrie inconvenyences and daungiers not provided for playnelie by the ſame former actes and ſtatuts . . . hath riſen and ſprung by reaſon of appeles . . . . .  
to the ſee of Rome in cauſes of teſtamentarie Matrymonie . .  
. . . . . right of tithes oblacions and



poraltie, ben bounden and owen to bere nexte to God a naturall and humble obedience ; he beyng also institute and furnysshed by the goodnes and sufferance of Almyghtie God with plenarie hoole and intiere power pemyence auctoritie p̄rogatyve and jurisdiction to rendre and yelde justice and finall det̄mynacion to all man of folke reseantes or subjectes within this his realme, in all causes maters debates and contencions happenyng to occurr insurge or begyne within the limittes therof without restraynt or p̄vocacion to any foreyn princes or potentates of the world : The body sp̄uall wherof having power whan any cause of the lawe devine happened to cōme in question or of sp̄uall lernyng, [than<sup>1</sup>] it was declared interprete and shewed by that parte of the said bodye politike called the sp̄ualtie now beyng usually called the Englishe Churche, which alwaies hath ben reputed and also founde of that sorte that bothe for knowlege integritie and sufficiencie of nombre it hath ben alwaies thought and is also at this houre sufficiente and mete of it selfe, without the intermedlyng of any exterior psonne or psonnes, to declare and det̄myne all suche dubtes and to administre all suche offices and duties as to their rômes sp̄uall doth apperteyne ; for the due admynstracion wherof and to kepe them frome corrupcion and synstre affection the Kinges moost noble p̄genitours, and the antecessours of the nobles of this realme, have sufficiently endowed the said Churche both with honour and possessions : And the lawes temporall for triall of ppriete of landes and goodes, and for the conservacion of the people of this realme in unitie and peace without ravyn or spoill, was and yet is administred adjudged and executed by sondry judges and administres of the other parte of the said body politike called the temporalitie, and bothe their auctorities and jurisdictions do conjoyne together in the due administracion of justice the one to helpe the other : And where as the Kinge his mooste noble p̄genitours and the nobilitie and cōmons of this said realme at dyvers and sondry Parliamentes as well in the tyme of King Edward the Firste, Edward the Thirde, Richard the Seconde, Henry the Fourth, and other noble Kinges of this realme made sondrye ordenaunces lawes statutes and p̄visions for the entier and [suer<sup>2</sup>] conservacion of the p̄rogatyves libties and p̄mynences of the said imperiall crowne of this realme, and of the jurisdictions sp̄uall and temporall of the same, to kepe it frome the anoyauce aswell of the see of Rome as fromme the auctoritie of other foreyne potentates attemptyng the diminucion or violacion therof as often and frome tyme to tyme as any suche annoyaunce or attempte myght be knownen or espied : And notwithstanding the said good estatutes

and ordynaunces made in the tyme of the Kyng<sup>e</sup> m<sup>o</sup> noble p̄genytours in p̄servacyon of the auctoritie and p̄rogatyff of the said imperyall crowne as is aforesayd, yet nev̄theles sythen the makyng of the sayd good statutes and ordenaunc<sup>e</sup> dyvers and sondry inconveniences and daungers not p̄vided for playnly by the said formar Actes, statutes and ordyn<sup>a</sup>nces have risen and spronge by reason of appeales sued oute of this realme to the see of Rome, in causes testamentarie causes of matrimony and dyvorses, right of tithes, oblacions and obvencions, not onlie to the greate inquietacion, vexacion, trouble, costes and charges of the Kinges Highnesse and many of his subjectes and reseantes in this his realme, but also to the greate delaye and lette to the trewe and spedy det̄mynacion of the said causes, for so moche as the parties appeling to the said courte of Rome moost comonly do the same for the delaye of justice : And forasmoch as the greate distaunce of waye is so farr out of this realme, so that the necessarie proves nor the true knowlege of the cause can nether there be so well knownen ne the witnesses there so well examined as within this realme, so that the parties greved by meanes of the said appeales be moost tymes without remedye : In consideracion wherof the Kinges Highnesse his nobles and commons considering the greate enormities daungers longe delayes and hurtes that aswell to his Highnesse as to his said nobles subjectes cōmons and reseantes of this his realme in the said causes testamentarie, causes of matrimonye & devorces, tithes, oblacions and obvencions, doo dailie ensue, dothe therfore by his roiall assente and by the assente of the lordes spirituall and temporall and the commons in this p̄sente Parliament assembled and by auctoritie of the same, enacte establishe and ordeyne that all causes testamentarie, causes of matrimony and divorces, rightes of tithes, oblacions and obvencions, the knowlege wherof by the goodnesse of princes of this realme and by the lawes and customes of the same apperteyneth to the sp̄uall jurisdiction of this realme alreedy cōmensed moved depending beyng happenyng or hereafter cōmyng in contencion debate or question within this realme or within any the Kinges dominions or marches of the same or els where, whether they cōtēne the King our sovaigne lorde his heires or successours or any other subjectes or reseantes within the same of what degree so ev̄ they be, shalbe frome hensforth harde examined discussed clerely finally and diffinityvely adjudged and det̄myned within the Kinges jurisdiction and auctoritie and not elleswhere, in such courtes sp̄uall and temporall of the same as the natures condicions and qualities of the causes and matters aforesaid in contencion or hereafter happenyng in contencion shall require, without having any respecte to any custome use or sufferance in hynderaunce lette or p̄judice of the same or to any other thinge used or suffered to the contrarie therof by any other man psonne or psonnes in any man of wise ; any foreyne inhibicions appeales sentences summons citacions suspensions indiccions excoicacions restrayntes judgements, or any other p̄cesse or impedymēt<sup>e</sup> of what natures names qualities or condicions so ev̄ they be, frome the see of Rome or any other foreyne courtes or potentates of the worlde, or frome and oute of this realme or any other the Kinges dominions or marches of the same to the see of Rome or to any other foreyn courtes or potentates, to the lette or impedymēt therof in any wise notwithstanding. And that it

appeals to Rome, and the evils thereof ;

the power, learning, and wisdom of the body spiritual ;

power, &c. of the temporality.

Laws and provisions by former Kings, Edward I. and III. Richard II. and Henry IV. against intrusions of the see of Rome ;

all testamentary and matrimonial causes, and all suits for tithes, oblacions, &c. shall be adjudged by the King's courts spiritual and temporal ; without regard to any process of foreign jurisdiction, or any inhibition, excommunication, or interdict, &c.

obvencions not onlie to the grete inquietacion vexacion trouble coste and charges . . . . . of the hole realme, but also to the gret delay and lette to the . . . . . spedy det̄mynacion of the saide causes for so moche as the parties appeling to the saide courte of Rome most comenlie doth the same onlie for delaye . . . . . and forasmoch as the grete distaunce of wey is so farr out of this realme whereby the necessarie proves and . . . . . knowlege of the cause can neither be there so well knownen ne the witnesses so duely examyned as within this realme.

<sup>1</sup> then O.

<sup>2</sup> sure O.



shalbe lefull to the King oure sovaigne lorde and to his heires and successours, and to all other subjectes or resiauntes within this realme or within any the Kinges dominions or marches of the same, notwithstanding that hereafter it shuld happen any excōmengemente excōdicacions in̄diccions citacions or any other censures or foreyne pcesse oute of any outwarde parties, to be fulmynte p̄vulged declared or putt in execucion within [this<sup>1</sup>] seid realme or in any other place or places for any of the causes before rehersed, in p̄judice dirrogacion or contempte of this said Acte and the verrie true meanyng and execucion therof, may and shall neverthelesse as well pursue execute have and enjoye the effectes p̄fittes benefittes and cōmodities of all suche p̄cesses sentences judgements and dēlmynacions, don or hereafter to be don in any the said courtes s̄puall or temporall as the cases shall require, within the limittes power and auctoritie of this the Kinges said realme and dominions and marches of the same, and those only and none other to take place and to be firmly observed and obeied within the same: As also that all the s̄puall p̄lates [pastures<sup>2</sup>] ministers and curates within this realme and the dominions of the same shall and may use ministre execute and doo or cause to be used ministred executed and don all sacramentes sacramentals dyvine s̄vices and all other thinges within the said realme and dominions unto all the subjectes of the same as Catholik and Cristen men owen to do; any [formar<sup>3</sup>] citacions p̄cesses inhibicions suspencions interdiccions excōdicacions or appeles for or touching (<sup>4</sup>) of the causes aforesaid frome or to the see of Rome or any other foreyne prince or foreyne courtes to the lette or contr̄ye therof in any wise notwithstanding. And if any of the said s̄puall p̄sonnes, by the occacion of the said fulminacions of any the same in̄diccions censures inhibicions excōdicacions appeles suspensions sūmons or other foreyne citacions for the causes beforesaid or for any of them, do at any tyme hereafter refuse to ministre or to cause to be ministred the said sacramentes and sacramentals and other divine s̄vices in forme as is aforesaid, shall for ēvy suche tyme or tymes that they or any of theym do refuse so to doo or to cause to be done, have one yeares imprisonment and to make fyne and raunsome at the Kinges pleasoure.

AND it is further enacted by the auctoritie aforesaid, that if any p̄sonne or p̄sonnes, inhabiting or resiaunte within this realme or within any the Kinges saide dominions or marches of the same, or any other p̄sonne or p̄sonnes of whate estate condicion or degree so ever he or they be, at any tyme hereafter for or in any the causes aforesaid doo attempte move purchase or p̄cure from or to the see of Rome or frome or to any other foreyn courte or courtes oute of this realme any maner foreyn p̄cesse inhibicions appeles sentences sommons citacions suspencions in̄diccions excōdicacions restrayntes or judgements of what nature kynde or qualitie so ēv they be, or execute any of the same p̄cesse or do any acte or actes to the lette impediment hynderaunce or dirrogacion of any p̄cesse sentence judgement or dēlmynacion hadd made done or hereafter to be had done or made in any courtes of this realme or the Kynges said dominions or marches of the same for any of the causes aforesaid, contr̄ye to the true meanyng of this p̄sente Acte and the execucion of the same, that [than<sup>5</sup>] ēvy suche p̄sonne or p̄sonnes so doyng and their fautours comfortours

abbettours p̄curers executers & counsaillours and ēvy of them beyng convicte of the same for ēvy suche defaulte shall incurre and ronne in the same peynes [penalites<sup>1</sup>] and forfaitours ordeyned and p̄vided by the Statute of p̄vision and p̄munire, made in the xvj yere of the reigne of the right noble prince Kyng Richard the Seconde ageynst suche as attempte p̄cure or make p̄vision to the see of Rome or elles where for any thing or thinges to the dirrogacion or contr̄ye to the p̄rogatyve or jurisdiction of the crowne and dignitie of this realme.

AND FURTHERMORE in eschuyng the said greate enormities inquietacions delaies charges and expenses hereafter to be susteyned in pursewyng of suche appelleles and foreyne p̄cesse for and con̄nyng the causes aforesaid or any of theym, doo therfore by auctorite aforesaid ordeyne and enacte that in .suche cases where heretofore any of the Kinges subjectes or resiauntes have used to pursue p̄voke or p̄cure any appele to the see of Rome, and in all other cases of appelleles in or for any of the causes aforesaid, they may and shall fromehensforth take have and use their appeles within this realme and not elles where in mañ and forme as hereafter ensueth, and not otherwise; that is to saye, firste frome the archedeacone or his official if the matt̄ or cause be there begune to the busshoppe diocesan of the saide see, if in case any of the parties be greved; and likewise if it be commensed before the byshope diocesan or his cōmissarie frome the byshope diocesan or his cōmissarie within fiftene dayes nexte ensuyng the judgement or sentence therof there yoven to the archebysshoppe of the p̄vynce of Caunturburye yff it be within his p̄vynce, and if it be within the p̄vynce of Yorke [than<sup>2</sup>] to the archbishop of Yorke; and so likewise to all other archebisshopps in other the Kynges dñions as the case by the order of justice shall require; and there to be diffinityvely and finally ordered decreed and adjudged accordyng to justice without any other appellation or p̄vocacion to any other p̄sone or p̄sonnes courte or courtes; And if the matt̄ or contencion for any of the causes afforesaid be or shalbe cōmensed by any of the Kynges subgittes or reseantes before the archedeacone of any archebusshoppe or his cōmissarie, [than<sup>2</sup>] the partie greved shall or maye take his appeale within fyvetene dayes nexte after judgemente or sentence there yoven to the Courte of the Arches or Audyence of the same archebisshopp (<sup>3</sup>) archebusshoppes, and frome the said Courte of the Arches or Audience within fyftene daies [than<sup>2</sup>] nexte ensuyng after judgement or sentence there yeven to the archebusshoppe of the same p̄vynce, there to be diffinityvely and finally dēlmyned without any other or furdur p̄cesse or appeale theruppon to be hadd or sued.

AND it is further enacted by the auctoritie aforesaid that all and ēvy matt̄ier, cause & contencion now dependyng or that hereafter shalbe cōmensed by any of the Kynges subjectes or resiauntes for any of the causes aforesaid before any of the said archebusshopps, that [than<sup>2</sup>] the same matter or matters contencion or contencions shalbe before the same archebusshopp where the said matter cause or p̄cesse shalbe soo cōmensed diffinityvely dēlmyned decreed or adjudged, without any other appele p̄vocacion or any other foreyne p̄cesse oute of this realme to be sued to the lette or dirrogacion of the

Prelates and clergy shall administer the sacraments and service of the church; notwithstanding such interdicts, &c. on penalty of one year's imprisonment.

II. Persons procuring process, appeals, sentences, &c. from or to the see of Rome, shall incur the penalties of premunire, under St. 16 Ric. II. c. 5.

III. Appeals hereafter shall be made within the realm; viz. from archdeacons to the bishops:

from the bishops to archbishops

from archdeacons to the Arches Court, and thence to the archbishop.

IV. No appeal from archbishops:

<sup>1</sup> the O. <sup>2</sup> pastor's O. <sup>3</sup> foreyn O. <sup>4</sup> any O. <sup>5</sup> then O.

<sup>1</sup> penalitees O.

<sup>2</sup> then O.

<sup>3</sup> or O.



Saving for the prerogative of abp. of Canterbury.

Appeals in cases touching the King, shall be made to the Upper House of Convocation.

said judgement, sentence, or decree otherwise than is by this Acte lymtyed and appoynted. Saving alwaies the prerogatyve of tharchebysshope and churche of Caunterburye in all the forsaide cases of appeles to hym and to his successours to be sued within this realme in suche and like wise as they have ben accustomed and used to have heretofore : And in case any cause mattier or contencion now depending for the causes before rehersed or any of theym or that hereafter shall come in contencion for any of the same causes in any of the forsaide courtes, which hath dothe shall or may touche the King his heires or successours Kynges of this realme, that in all and evy suche case or cases the partie greved as before is said shall or may appelle, frome any of the said courtes of this realme where the said mattier nowe beyng in contencion or hereafter shall come in contencion touching the King his heires or successours as is aforesaid shall happen to be ventilate comensed or begunne, to the spūall prelatez and other abbottes and priours of the Upper House assembled and convocate by the Kynges writte in the Convocacion beyng or nexte ensuyng within the province or pvynces where the same matter of contencion is or shalbe begunne ; so that evy such appele be taken by the partie greved within xv. daies nexte after the judgement or sentence theruppon yoven

or to be yoven. And that what soeᵛ be done or shalbe done and affirmed determyned decreed and adjudged by the forsaide prelates abbotes and priours of the Upper House of the said Convocacion as is aforesaid, apperteynyng conūnyng or belongyng to the Kyng his heires & successours in any of these forsaide causes of appeles, shall stonde and be taken for a finall decree sentence judgement diffinicion and detmynacion, & the same mattier so detmyned never after to come in question and debate to be examined in any other courte or courtes : And if it shall happen any psone or psonnes hereafter to pursue or pvoke any appele contrarie to the effecte of this Acte or refuse to obeye execute and observe all thinges comprised within the same, conūnyng the said appeles pvcacions and other foreyne pcesses to be sued oute of this realme for any the causes aforesaid, that [than <sup>1</sup>] evy suche psone and psones so doying refusing or offending contrarie to the true meanyng of this Acte, their [pcurers <sup>2</sup>] fautours advocates counsaillours and abbettours and evy of them shall incurre into the peynes forfeitures and penalties ordeyned and pvided in the said statute made in the said xvj yere of King Richard the Seconde, and with like pcesse to be made ayenst the said offenders as in the same statute made in the said xvj yere more pleyntly apperythe.

Persons appealing contrary to this Act shall incur penalties of pre-munire under St. 16 Ric. II. c. 5.

## 25 HENRY VIII. CHAPTER XIX.

### AN ACTE for the submission of the Clergie to the Kynges Majestie. [a]

Acknowledgment and petition by the clergy with respect to ecclesiastical constitutions, &c. and the examination of them :

WHERE the Kynges humble and obedyent subjectes the clergy of this realme of Englonde have not only knowleged accordyng to the truthe that the Convocations of the same clergie is always hath byn and ought to be assembled only by the Kynges writt, but also submyttyng theym selves to the Kynges Majestie hath pmysed in verbo sacerdotii that they wyl never frome hensforthe presume to attempte allege clayme or putt in ure or enacte promulge or execute any newe canons constitucions ordynaunce pvynciall or other, or by what soo ever other name they shall be called in the Convocacion, onles the Kynges most royall assente and licence may to theyme be had to make promulge and execute the same, and that hys Majestie doo geve hys most ryall assente and auctorytie in that behalf : And where dyverse constitucions ordynance and canons provynciall or synodall which here to fore have byn enacted, and be thought not only to be muche prejudiciall to the Kynges prerogatyve royall and repugnānt to the lawes and statutes of this realme, but also over moche onerous to hys Highnes and hys subjecte, the seid clergie hath most [humble <sup>1</sup>] besought the Kynges Highnes that the seid constitucions and canons may be comyttid to the examynacion and jugement of hys Highnes and of [xxxij<sup>th</sup> <sup>2</sup>] persons of the Kynges subjecte wherof [xvj<sup>th</sup> <sup>3</sup>] to be of the upper and nether House of the Parliament of the tempaltie and the other [xvj <sup>3</sup>] to be of the clergie of this realme, and all the seid [xxxij <sup>2</sup>] psones to be chosen and appoynted by the Kynges Majestie, and that suche of the seid constitucions and canons as shalbe thought and detmyned by the seid [xxxij<sup>th</sup> <sup>2</sup>] persons or the more parte of theym worthy to be abrogated and

adnulled shalbe abolyte and made of noo value accordyngly, and suche other of the same constitucions and canons as by the seid xxxij<sup>th</sup> or the more part of theym shalbe approved to stonde with the lawes of God and consonant to the lawes of this realme shall stonde in their full strength and power, the Kynges most ryall assent fyrst had and opteyned to the same : Be it therfore now enacted by auctoritie of this present Parliament accordyng to the seid submyssyon and petition of the seid clergie, that they ne any of theym from hensforthe shall presume to attempte allege clayme or put in ure any constitucions or ordynance provynciall or synodales or any other canons, nor shall enacte promulge or execute any suche canons constitucions or ordynance provynciall, by what soo ever name or names they may be called in their Convocations in tyme comyng, which alway shalbe assembled by auctorytie of the Kynges wrytte, onles the same clergie may have the Kynges most royal assent and lycence to make promulge and execute suche canons constitucions and ordynaunces pvynciall or synodall ; uppon payne of every one of the seid clergie doing contrary to this Acte and being therof convycte to suffer imprysonement and make fyne at the Kynges wyll.

The clergy shall not make any constitutions except in convocation with the King's assent, &c.

AND FOR AS MOCHE as suche canons constitucions and ordynance as here to fore hath byn made by the clergie of this realme can not nowe atte the session of this present Parliament by reason of shortnes of tyme

On penalty of fine and imprisonment.

II. The King may assign 32 persons to examine former canons, &c.

<sup>1</sup> then O.

<sup>2</sup> procurers O.

[<sup>a</sup> Rep. so far as relates to any power hereby given to appeal in any case to the King's Majesty in his High Court of Chancery, and so far as the same empowers His Majesty to grant a commission under the great seal authorizing the persons therein named to hear and determine such appeals, 2 & 3 Will. 4. c. 92. s. 1.]

<sup>1</sup> humbly O.

<sup>2</sup> xxxij O.

<sup>3</sup> xvj.



and to approve or repeal them with the King's assent.

be viewed examyned and determyned by the Kynges Highnes and xxxij persones to be chosen and appoynted accordyng to the petition of the seid clergie in forme above rehersed: Be it therfore enacted by auctorytie aforeseid that the Kynges Highnes shall have power and auctoritie to nōinate and assigne at hys pleasure the seid xxxij persones of hys subjectes, wherof xvj to be of the clergie and xvj to be of the temporaltie of the upper and nether House of the Parliamente. And yf any of the seid xxxij psones soo chosen shall happen to dye before their full detmynacion then hys Highness to nomynate other frome tyme to tyme of the seid two Houses of the Parliament to supply the nombre of the seid xxxij: and that the same xxxij by hys Highnes so to be named, shall have power and auctoritie to vyewe serche and examyne the seid canons constitucions & ordyn<sup>a</sup>n<sup>c</sup>e p<sup>r</sup>ovyn<sup>c</sup>iall and synodall heretofore made, and suche of theym as the Kynges Highnes and the seid xxxij<sup>d</sup> or the more parte of theyme shall deme and adjudge worthy to be contynued kept and obeyed, shalbe frome thensforth kepte obeyed and executed within this realme, soo that the Kynges most royal assent under hys greate seale be furst had to the same; and the residue of the seid canons constitucions [or <sup>1</sup>] ordyn<sup>a</sup>n<sup>c</sup>e p<sup>r</sup>ovyn<sup>c</sup>iall whiche the Kynges Highnes and the seid xxxij persons or the more parte of theym shall not approve, or deme and juggle worthy to be abolyte abrogate and made frustratt, shall from thensforthe be voyde and of none effecte and never be put in execucion within this realme.

III.  
No canons, &c. shall be enforced contrary to the King's prerogative.

IV.  
No appeals to Rome; or otherwise than accordyng to St. 24 Hen. VIII. chapter 12.

Appeals from arch-bishop's court to the Chancery, and to be determined by commissioners to be appointed by the King.

sion shalbe directed under the greate seale to suche psones as shalbe named by the Kynges Highnes hys heyres or successours lyke as in case of appele frome the Admyrall Courte, to here and dyffynytyvly determyne suche appeles and the causes conŕnyng the same; whiche cōmyssioners soo by the Kynges Highnes hys heires or successours to be named or appoynted shall have full power and auctoritie to here and deffynytyvely determyne every suche appele with the causes and all circumstaunces concernyng the same; and that suche jugement and sentence as the seid cōmissioners shall make and decree in and [apon <sup>1</sup>] any suche appele shalbe good and effectuell, and also dyffynytyve, and noo further appeles to be hade or made frome the seid cōmyssioners for the same.

AND yf any person or persons at any tyme after the seid feast of Easter, provoke or sue any maner of appeles, of what nature or condicion soo ever they be of, to the said Bisshoŕ of Rome or to the see of Rome, or do procure or execute any man of pcesse from the see of Rome or by auctorytie therof, to the deregacion or lett of the due execucion of this Acte or contrarye to the same, that then every suche person or persons soo doing their aydours counsaylours and abbettours shall incurre and renne into the daungers paynes and penalties conteyned and lymytted in the Acte of provysion and premunyre, made in the xvj yere of the Kyn smoste noble pgenytoure Kyng Richard the Secōnde agaynst such as sewe to the courte of Rome agayne the Kynges crowne and prerogatyve royalle.

(2) PROVIDED alwais that all maner of provocacions and appeales, here after to be had made or taken frome the jurisdiction of any abbottes pryours & other heddes and governours of monasteries abbeis priories and other houses and places exempt, in suche cases as they were wont or moughte afore the making of this Acte, by reason of grauntes or libties of suche places exempt, to have or make ymmedyatly any appele or pvocacion to the Bysshōŕ of Rome otherwyse called Pope, or to the see of Rome, that in all theis cases evy pson and persons havng cause of appele or provocacion shall may take and make their appeles and provocacions immedyatly to the Kynges Majestie of this realme into the Courte of Chaunŕie, in lyke maner and forme as they used afore to do to the see of Rome; whiche appelles and provocacions soo made shalbe dyffynytyvely detmyned by auctorytie of the Kynges cōmission in suche maner and forme as in this Acte is above mencioned; soo that noo archebishoŕ nor bisshoŕ of this realme shall entermette or meddell with any such appelles otherwyse or in any other maner [then <sup>3</sup>] they mought have done afore the making of this Acte; any thyng in this Acte to the contrarie therof not withstondyng.

PROVYDED also that suche canons constitucions ordynaunces and synodals provyn<sup>c</sup>iall being allredy made, which be not contraryant nor repugnant to the lawes statutes and customes of this realme nor to the damage or hurte of the Kynges prerogatyve royall, shall mowe styll be used and executed as they were afore the making of this Acte, tyll suche tyme as they be vyewed serched or otherwyse ordered and detmyned by the seid xxxij persons or the more parte of theym, accordyng to the tenour fourme and effecte of this present Acte.

<sup>1</sup> upon O.

<sup>2</sup> This and the succeeding proviso are inserted in a schedule annexed to the original Act.

<sup>3</sup> than O.

V.  
Penalty on suing appeals to Rome, &c. premunire as under the Statute 16 Ric. II. cap. 5.

VI.  
Appeals from all places exempt shall be into Chancery, instead of to Rome.

VII.  
Present canons, &c. shall remain in force till reviewed.

<sup>1</sup> and O.

<sup>2</sup> court O.



## 25 HENRY VIII. CHAPTER XX.

## AN ACTE restraynyng the payment of Annates, &amp;c.

Recital of  
Statute 23  
Hen. VIII.  
c. 20. against  
payment of  
first fruits,  
&c. to the  
see of Rome;

WHERE sithen the begynnyng of this present Parliament, for represses of the exaccion of annates and first frutes of archebysshopryches and byshopryches of this realme wrongfully taken by the Bisshoꝝ of Rome otherwyse called the Pope, and the see of Rome, it is ordyned and establisshed by an Acte amonges other thynges that the payment<sup>e</sup> of the annates or first frutes and all maner contribucions for the same, for any suche archebysshopryche or bisshopryche or for any bulles to be opteyned frome the see of Rome to or for the seid purpose or intent shulde utterly cesse, and no suche to be payd for any archebysshopryche or byshopryche within this realme otherwyse then in the same Acte is expressed; and that no maner of person or persons, to be named elected presented or postulated to any archebysshopryche or byshopryche within this realme, shulde pay the seid annates or first frutes nor any other maner of some or somes of money pensions or annuytes for the same or for any other lyke exaccion or cause, uppon payne to forfait to our soveraigne lorde the Kynge hys heires and successours all maner hys goodes and cattallis for ever and all the temporall landes and possessions of the seid archebysshopryche or bisshopryche duryng the tyme that he or they that shulde offende contrarye to the seid Acte shulde have possede and enyoe the seid archebysshopryche or bisshopryche; and it is further enacted that yf any person named or presented to the see of Rome by the Kynges Highnes or hys heires or successours to be bisshop of any see or dioces within this realme, shuld happen to be [letted<sup>1</sup>] delayed or deferred at the see of Rome frome any suche bisshopryche wherunto he shulde be soo presented, by meane of restraynte of bulles of the seid Bysshoꝝ of Rome otherwyse called the Pope, and other thynges requysite to the same, or shulde be denyed at the see of Rome uppon convenient sute made for any bulles requysite for any suche cause, that then every person soo presentid mought or shulde be consecrated here in Englonde by the archibisshoꝝ in whose pvynce the seid byshopryche shalbe, soo alwayes that the same person shulde be named and presented by the Kyng for the tyme being to the seid archebysshop; and yf any person being named and presented (as is before seid) to any archebysshopryche of this realme makynge convenient sute as is aforesaid shuld happen to be letted delaid deferred or otherwyse disturbed frome the seid archebysshopryche, for lacke of pall bulles or other thynges to hym requysite to be opteyned at the see of Rome, that then every suche person so named and presented to be archebysshop mought and shuld be consecrated and invested after presentacion made as is aforesaid by any other ij bisshoppes within this realme; whome the Kynges Highnes or any hys heires or successours Kynges of Englonde wolde appoynt [ad<sup>2</sup>] assigne for the same, accordyng and after lyke maner as dyverse archibisshoppes and bisshoppes have byn here to fore in auncient tyme by sondre the Kynges most noble progenytours made consecrated and invested within this realme; and it is further enacted by the seid Acte that every archibisshoꝝ and bisshoꝝ being named and presented by the Kynges Highnes hys heires and successours Kynges of Englonde, and being consecrated and invested as is aforesaid, shalbe installed accordyngly, and shulde be

accepted taken and reputed used and obeyed as an archebysshoꝝ or bisshoꝝ of the dignitie see or place wherunto he shalbe soo named presented & consecrated, and as other lyke prelatt<sup>e</sup> of that provynce see or dyoces have byn used accepted taken and obeyed which have had and opteyned completlye their bulles and other thynges requysite in that behalf from the see of Rome; and also shulde fully and enterly have and enjoye all the spiritualties and temporalties of the seid archibisshopryche or bisshopryche, in as large ample and beneficiall maner as any of hys or their predecessours hadde [and<sup>1</sup>] enyoyed in the seid archebysshopryche or bisshopryche, satisfying and yeldyng unto the Kynges Highnes and to his heires and successours all suche duties rightes and interestes as before tyme hath byn accustomed to be payd for any suche archebysshopryche or bisshopryche, accordyng to the auncient lawes and customes of this realme and the Kynges prerogatyve royall; as in the seid Acte amonges other thynges is more at large mencioned:

AND all be it the seid Bisshopp of Rome, otherwyse called the Pope, hath byn enformed and certyfied of the efectuall contentes of the seid Acte, to the entent that by some gentell wayes the seid exaccions myght have byn redressed and reformed, yet never the lesse the seid Bisshoꝝ of Rome hetherto hath made none aunswere of hys mynde therin to the Kynges Highnes, nor devysed or requyred any resonable wayes to and with our seid soveraigne lorde for the same; wherfore hys most royall Majestie of hys most excellent goodnes for the welthe and profett of this hys realme and subjectes of the same, hath not only put hys most gracious and royall assent to the forseid Acte, but also hath ratyfied and confirmed the same and evy clause and article therin conteyned, as by hys letters patentes under hys greate seale enrolled in the Parliament Rolle of this present Parliament more at large is conteyned.

AND for as moche as in the seid Acte it is not playnly and certaynly expressed in what maner and facion archebysshoppes and bisshoppes shalbe elected presented invested and consecrated within this realme and in all other the Kynges domynyons: Be it now therfore enacted, by the Kynge our soveraigne lorde by thassent of the lordes spirituall and temporall and the comones in this present Parliament assembled and by the auctorytie of the same, that the seid Acte and everythyng therin conteyned shalbe and stonde in strenght vertue and effecte; except only that noo person nor psones hereafter shalbe presented nomynded or comended to the seid Bisshoꝝ of Rome, otherwyse called the Pope, or to the see of Rome, to or for the dignitie or office of any archebysshoꝝ or bisshoꝝ within this realme or in any other the Kynges domynyons, nor shall send nor procure there for any maner of bulles breves palles or other thynges requysite for an archebysshop or bishop, nor shall pay any somes of money for annott<sup>e</sup> first frutes or otherwyse for expedicion of any suche bulles breves or palles; but that by the auctorytie of this Acte suche presentyng nomyndatyng or comendyng to the seid Bisshoꝝ of Rome or to the see of Rome, and suche bulles breves palles annott<sup>e</sup> first frutes and every other somes of money heretofore lymytted ac-

the Pope informed of the said Act;

royal assent to, and confirmation of the said Act.

II.  
No archbishop or bishop shall be presented to the see of Rome, nor procure bulls from thence, nor pay first fruits there.

<sup>1</sup> lettyd O.

<sup>2</sup> and O.

<sup>1</sup> or O.



customed or used to be payd at the seid see of Rome for procuracion or expedicion of any suche bulles breves or palles or other thyng coneynyng the same, shall utterly sease and no lēger be used within this realme or within any the Kynges domynyons; any thyng conteyned in the seid Acte afore mencioned, or any use custume or prescripcion to the contrary therof not withstanding.

III.  
All elections of the archbishops or bishops shall be made by the deans and chapters, &c. under the King's licence and letters missive naming the person to be chosen; and in default of such election the King shall present by his letters patent.

AND FURTHER MORE be it ordyned and established by the auctorytie aforsed, that at every advoydaunce of [every<sup>1</sup>] archbishopriche or bishopriche within this realme or in any other the Kynges domynyons, the Kyng our soveran lorde hys heires and successours may graunt unto the pryor and convent or the deane and chapytour of the cathedrall churches or monasteries where the see of souch archbishopriche or bishopriche shall happen to be voyde, a lycence under the greate seale as of old tyme hath byn accustomed to pcede to eleccion of an archbishopp or bishop of the see soo being voyde, with a letter myssyve conteynyng the name of the persone which they shall electe and chose; by vertue of which licence the seid deane and chapitour or pryor and convent, to whome any suche licence and letters myssyves shalbe directed, shall with all spede and seleritie in due forme electe and chose the seid person named in the seid letters myssyves to the dignitie and office of the archbishopriche or bishopriche soo being voyde, and none other; and yf they doo [or<sup>2</sup>] deferre or delay their eleccion above xij dayes next after suche licence and letters myssyves to theym delyvered, that then for every suche defaute the Kynges Highnes hys heires and successours at their libertie and pleasure shall nomynate and present, by their lres patentes under their greate seale, suche a person to the seid office and dignitie soo being voyde as they shall thynke abyll and convenyent for the same. And that every such nomynacion and p̄sentment to be made by the Kynges Highnes hys heires and successours, yf it be to the office and dignitie of a bishop shalbe made to the archebisshopp and metropolitane of the provynce where the see of the same bishopriche ys voyde, yf the see of the seid archbishopriche be then full and not voyde; and yf it be voyde then to be made to suche archebisshopp or metropolitane within this realme or in any the Kynges domynyons as shall please the Kynges Highnes hys heires or successours: And yf any such nomynacion or presentment shall happen to be made for defaute of suche eleccion to the dignitie or office of any archebisshopp then the Kynges Highnes his heires and successours, by hys letters patentes under hys greate seale, shall nomynate and present such person, as they wyll dispose to have the seid office and dignitie of archebishopriche beyng voyde, to one suche archebisshopp and ij. suche bishoppes, or else to iiij. suche bishoppes wythin this realme or in any the Kynges domynyons as shalbe assigned by our seid soveraigne lorde hys heires or successours.

IV.  
Consecration of archbishops or bishops, on the King's presentment.

AND be it enacted by auctoritie aforseid, that when soo ever any suche presentment or nomynacion shalbe made by the Kynges Highnes hys heires or successours by vertue and auctoritie of this Acte and accordyng to the tenour of the same, that then every archebisshopp and bishop to whos handes any suche presentment and nomynacion shalbe directed, shall with all spede and seleritie investe and consecrate the

person nōiate and presentid by the Kynges Highnes his heires or successours to the office and dignitie that suche pson shalbe soo presented unto, and geve and use to hym all and all other benediccions ceremonyes and thynges requysite for the same, without suing pcuryng or optaynyng hereafter any bulles or other thynges at the see of Rome for any suche office or dignitie in any behalf. AND yf the seid deane and chaptyer or pryor and convent after suche licence and letters myssyves to theym directed, within the seid xij dayes do electe and chose the seid person mentioned in the seid lres myssyves, accordyng to the requeste of the Kynges Highnes hys heires or successours therof to be made by the seid letters myssyves in that behalf, then their eleccion shall stonde good and effectuell to all intentes; and that the person soo elected after certificacion made of the same eleccion under the cōmen and covent seale of the electours to the Kynges Highnes hys heires or successours, shalbe reputed and taken by the name of lorde elected of the seid dignitie and office that he shalbe electid unto; and then makyng such othe and fealtie only to the Kynges Majestie hys heires and successours as shalbe appoynted for the same, the Kynges Hyghnes by hys letters patentes under hys greate seale shall signifye the seid eleccion yf it be to the dignitie of a byshopp to the archebisshopp and metropolitane of the provynce where the see of the seid byshopriche was voyde, yf the see of the seid archebisshopp be full and not voyde; and yf it be voyde, than to any other archebyshopp within this realme or in any other the Kynges domynyons, requyryng and cōmaundyng suche archabisshopp to whome any suche significacion shalbe made, [to confirme the seid eleccion and<sup>1</sup>] to invest and consecrate the seid persone so electid to the office and dignitie that he is elected unto, and to geve and use to hym all suche benediccions ceremonyes and other thynges requysite for the same without any suyng pcuryng or opteynyng any bulles letters or other thynges frome the see of Rome for the same in any behalf: And yf the person be elected to the office and dignitie of an archebisshopp accordyng to the tenour of this Acte, then after suche eleccion certified to the Kynges Highnes in forme aforseid, the same person soo elected to the office and dignitie of an archebisshopp shalbe reputed and taken lorde electe of the seid office and dignitie of archebisshopp wherunto he shalbe so elected; and then after he hath made such othe and fealtie only to the Kynges Majestie hys heires and successours as shalbe lymytted for the same, the Kynges Highnes by hys letters patentes under hys greate seale shall signifie the seid eleccion to one archebisshopp and ij other bisshoppes or else to iiij bishoppes within this realme or within any other the Kynges domynyons to be assigned by the Kynges Highnes his heires or successours, requyryng and cōmaundyng the seid archebisshopp and bysschoppes with all spede and seleritie [to confirme the seid eleccion and<sup>2</sup>] to investe and consecrate the seid person soo elected to the office and dignitie that he is elected unto, and to geve and use to hym suche palle benediccions ceremonyes and all other thynges requysite for the same without suing pcuryng or opteynyng any bulles breves or other thynges at the seid see of Rome or by the auctorytie therof in any behalf.

Proceedings and consecration on election by deans and chapters, &c.:  
Of bishops:

Of Archbishops.

<sup>1</sup> any O.

<sup>2</sup> Interlined in the original Act.

<sup>1 2</sup> Interlined in the original Act.



V.  
Such elec-  
tions, conse-  
crations, &c.  
declared  
effectual.

AND be it further enacted by auctorytie aforeseid, that every person and persons being hereafter chosen elected nomynate presented invested and consecrate to the dignitie or office of any archebishop or byshoꝝ, within this realme or within any other the Kynges domynyons, accordyng to the forme tenure and effecte of this p̄sente Acte, and suing theire temporalties out of the Kynges handes hys heires or successours as hath byn accustomed, and makyng a corporall othe to the Kynges Hyghnes and to none other in forme as is afore rehersed, shall and may from hensforth be trononyseid or installed as the case shall require, and shall have and take their only restitution out of the Kynges handes of all the possessions and profettē spirituell and temporall belongyng to the seid archebishopriche or bishopriche wherunto they shalbe soo elected or presented, and shalbe obeyed in all maner of thynges accordyng to the name title degree and dignitie that they shalbe so chosen or p̄sented unto, and doo and execute in every thyng and thynges touchyng the same, as any archebishop or byshoꝝ of this realme, without offendyng the prerogatyve royall of the crowne and the lawes and customes of this realme, mought at any tyme heretofore doo.

VI.  
All persons  
who shall  
neglect to  
elect or  
consecrate  
bishops, &c.  
or shall  
obey any  
censures,  
&c. for so  
doing, shall

AND be it further enacted by the auctoritie aforeseid, that yf the prior and covent of any monastery or cleane and chapitour of any cathedrall church where the see of any archebishop or bishop is within any of the Kynges domynyons, after suche licence as is afore

rehersed shalbe delyvered to theym, procede not to eleccion and signyfie the same accordyng to the tenour of this Acte within the space of xx dayes next after suche licence shall come to their handes, or els yf any archebishop or bishop within any the Kynges domynyons, after any suche eleccion nomynacion or presentacion shalbe signified unto theym by the Kynges fres patentēs, shall refuse and do not [conferme<sup>1</sup>] invest and consecrate with all due circumstance as is aforeseid every suche pson as shalbe soo elected nomynate or presented and to theyme signified as is above mencioned, within xx dayes next after the Kynges fres patentēs of suche signification [or presentacion<sup>2</sup>] shall come to their hande; or els yf any of theym or any other pson or persones admytte maynteyne allowe obey doo or execute any censures excomunicacions interdiccions inhibicions, or any other pcesse [or acte<sup>3</sup>] of what nature name or qualitie soo ever it be, to the contrary or lett of due execucion of this Acte, that then every pryour and particuler person of hys convent, and every deane and particuler person of the chapter, and every archebishop and bishop and all other persons soo offendyng and doing contrary to this Acte or any parte thereof and their aydours counsaylours and abettours shall ronne into the daungers peynes and penalties of the Estatute of the provysion and premunire made in (<sup>4</sup>) xxv. yere of the reigne of Kyng Edward the Thirde, and in the xvj yere of Kynge Richarde the Seconde.

incur a  
premunire  
under  
Statutes  
25 E. III.  
stat. 5. c. 22 :  
and 16 Ric.  
II. c. 5.

## 2 & 3 EDWARD VI. CHAPTER I. [<sup>a</sup>]

### AN ACTE for the Unyformytie of Service and Admynistraçōn of the Sacramentē throughout the Realme.

Various  
forms of  
common  
prayer used  
in England  
and Wales :

WHERE of longe tyme there hath bene hadd, in this realme of Englande and in Wales, diṽse formes of cōen prayer comonlie calied the ſvice of the Churchē, that is to saye, the use of Saṽ, of Yorke, of Bangor and of Lyncolne; and besides the same nowe of late muche more diṽse and sondrie fourmes & facions have been used in the cathedrall and parishe churches of Englande and Wales, aswell concernyng the mattens or mornynge prayer and the evensong, as also concerninge the hollie Comunyon comonlie called the Masse, withe diṽse and sondre rytes and ceremonyes concerninge the same, and in the admynistraçōn of other sacramentē of the Churchē; and as the doers and executors of the saide rytes and ceremonyes, in other fourme then of late yerēs they have bene used, were pleased therwithe, so other not usinge the same rytes and ceremonyes were therby greatlie offended; and albeit the Kingē Majestie, withe thadvise of his moste entirely beloved uncle the Lorde Protector and other of his Highnes counsell, hath heretofore diṽse tymes assayed to staye innovaçōns or newe rites concerninge the premisses, yet the same hath not hadd suche good successe as his Highnes required in that behalfe; whereupon his Highnes by the most prudent advise aforesaide, beinge pleased to beare withe the frayltie and weknes of his subjectes in that behalfe, of his greате clemencye hath not bene onelie content to abstayne from punyshment of those that have offended in that behalfe, for that his Highnes taketh that they did it of a good zeale, but

The Book  
of Common  
Prayer after  
the use of  
the Church  
of England,  
prepared by  
the arch-  
bishop of  
Canterbury,  
bishops, &c.  
under the  
King's ap-  
pointment :

also to the intent a unyforme quyett and godlie order shoulde be had concerninge the p̄misses, hath appoynted tharchebisshopp of Canterburie, and certayne of the most learned and discrete bisshoppes and other learned men of this realme, to consider and ponder the p̄misses, and thereupon havinge aswell eye and respecte to the moste syncere and pure Christian religion taught by the Scripture, as to the usagē in the primatyve Churchē, shoulde drawe and make one convenient and mete order ryte and facyon of comen and open praier and admynistraçōn of the sacramentē, to be had and used in his Majesties realme of Englande and in Wales; the whiche at this tyme, by the ayde of the Holie Ghooste, with one unyforme agreement is of them concluded set forthe and delivēd to his Highnes, to his greате comforte and quietnes of mynde, in a booke entituled The Booke of the Cōmon Prayer and admynistraçōn of the Sacramentē and other rightes and ceremonyes of the Churchē after the use of the Churchē of Englande: Wherefore the lordes sp̄uall and temporall and the cōmons in this p̄sent Parliament assembled, consideringe aswell the moste godlye travell of the Kinges Highnes of the Lorde Protector and other of his Highnes counsell, in gatheringe & collectinge the saide archebisshopp bisshoppes and learned men together, as the godlie prayers orders rites and ceremonyes in the

Approbation  
thereof by  
the lords  
and com-  
mons in  
Parliament :

<sup>1 2 3</sup> Interlined in the original Act.

<sup>4</sup> the O.



saide booke mencioned, and the consideracons of alteringe those thinges whiche be altered, and reteyn- inge those thinges which be reteyned in the saide booke, but allso the honor of God and greate quietnes, wch by the grace of God shall ensue upon the one and uniforme ryte and order in suche comon prayer and rytes and extern ceremonies, to be used throughout England and in Wales at Callice and the marches of the same, doe give to his Highnes most hartie and lowly thanckes for the same, and humbly prayen that it maye be ordeyned and enacted by his Majestie withe the assent of the lordes and comons in this pnt Parliament assembled and by thauctoritie of the same, that all and singuler pson and psons that have offended concerninge the pmisses, other then suche pson and psons as nowe be and remayne in warde in the Towre of London or in the Flete, maye be pardoned therof: And that all and singuler ministers in any cathedrall or parishe church, or other place within this realme of Englande Wales Calyce and marches of the same or other the Kinges dnions, shall from and after the feast of Pentecoste next comynge be bounden to saye and use the matens evensonge celebracon of the Lordes Supper comonlye called the Masse and adminystracon of eche of the sacrament, and all their cōen and open prayer, in suche order and fourme as ys mencioned in the saide booke and none other or otherwise.

AND albeit that the same be soe godlie and good that they give occacon to evy honeste and conformable man moste willinglie to embrace them, yet lest anye obstinate pson, who willinglie woulde disturbe soe godlie order and quiett in this realme, shold not goe unpunished, that it maye also be ordeyned and enacted by thauctoritie aforesaide, that if any manner of pson vicar or other whatsoever minister, that ought or shoulde synge or saye comon prayer menconed in the saide booke, or mynister the sacrament, shall after the saide feast of Pentecoste next comynge refuse to use the saide comon prayers, or to mynister the sacrament, in suche cathedrall or parishe church or other places as he shoulde use or mynister the same, in suche order and fourme as they be mencioned and sett forth in the saide booke, or shall use, wilfully and obstinatlie standinge in the same, any other ryte ceremonye order fourme or manner of masse openly or privilye, or mattens evensonge adminystracon of the sacrament or other open prayer then ys mencioned and sett forth in the saide booke; open prayer in and throughout this Acte is ment that prayer whiche is for other to come unto or heare, either in comen churches or private chappell or oratories, comonlye called the Service of the Church; or shall preache declare or speake any thinge in the derogacon or depravinge of the saide booke or any thinge therein conteyned, or of any parte thereof, and shalbe thereof lauffullie convicted accordinge to the lawes of this realme, by verdite of twelve men or by his owne confession or by the notorious evidence of the facts, shall lose and forfeyte to the Kinge Highnes his heires and successors, for his firste offence, the ppytt of suche one of his spual benefices or pmocons as it shall please the Kinges Highnes to assigne or appoynte comynge and arysinge in one hole yere next after his conviction; and also that the same pson soe convicted shall for the same offence suffer emprisonement by the space of sixe monethes without bayle or maynprise; and if anye suche pson, ones convicted of any offence concerninge the pmisses, shall after his firste conviction eftsones offende and be therof in fourme aforesaide lauffully

convicte, that then the same pson shall for his seconde offence suffer emprisonement by the space of one hole yere, and also shall therefore be deprived ipo facto of all his spual pmocons; and that it shalbe lauffull to all patrons donors and grauntees of all and singuler the same spual pmocons to p̄sent to the same any other hable clerke, in like manner and fourme as though the partie so offending were dead: And that if anye suche pson or psons, after he shalbe twice convicted in fourme aforesaide, shall offende against anye of the pmisses the thirde tyme and shalbe thereof in fourme aforesaide lauffullie convicted, that then the pson soe offending & convicted the thirde tyme shall suffer imprisonment duringe his lief: And if the pson that shall offende or be convicte in fourme aforesaide, concerninge anye of the pmisses, shall not be beneficed nor have anye spual promocon, that then the same pson so offending & convicte shall for the firste offence suffer emprisonement duringe sixe monethes without bayle or maynprise; and if anye suche pson not havinge anye spual pmocon after his first conviction shall eftsones offende in any thinge concerninge the pmisses, and shall in fourme aforesaide be therof lawfullie convicted, that then the same pson shall for his seconde offence suffer emprisonement duringe his lief.

AND it is ordeyned and enacted by thauctoritie above saide, that yf any pson or psons whatsoever after the saide feaste of Pentecoste next comynge, shall in anye enterludes playes songes rymes, or by other open wordes, declare or speake anye thinge in the derogacon depravinge or dyspisinge of the same booke or of anye thinge therein conteyned or anye parte thereof, or shall by open facte dede or by open thretnyng compell or cause or otherwise p̄cure or mayntayne any pson vicar or other minister, in any cathedrall or parishe church or in anye chappell or other place, to synge or saye any cōen and open prayer or to mynister any sacrament, otherwise or in any other manner or fourme then is mencioned in the saide booke, or that by any of the saide meanes shall unlawfully interrupte or lett any pson vicar or other ministers in any cathedrall or parishe church chappell or any other place to synge or saye cōen and open prayer or to mynister the sacrament or any of them in anye suche manner and fourme as is mencioned in the saide booke, that then everie pson beinge thereof lauffullie convicted in fourme abovesaide shall forfeyte to the Kinge our soveraigne lorde his heires and successors for the firste offence tenne pounds; and if any pson or psons, beinge ons convicte of anye suche offence, eftsones offende againste anye of the pmisses and shall in fourme aforesaide be thereof lauffully convict, that then the same pson so offending and convict shall for the seconde offence forfeyt to the King our soveraigne lorde his heires and successors twentie pound; and if anye parsones, after he in fourme aforesaide shall have bene twice convicte of any offence conynge any of the pmisses, shall offende the thirde tyme and be thereof in fourme aforesaid lauffullye convicte, that then everie pson soe offending and convicte shall for his thirde offence forfeit to our soveraigne lorde the Kinge all his goodes and cattalls and shall suffer ymprisonement duringe his lief: And yf any pson or psons, that for his firste offence concerninge the pmisses shalbe convicte in fourme aforesaide, doe not paye the some to be payde by vertewe of his conviccon in suche manner and fourme as the same ought to be payed, within sixe wekes next after his conviccon,

third offence, imprisonment for life.

Penalty on persons not beneficed, imprisonment.

III. Penalty on other persons, by plays songs or words depraving or despising the said common prayer, or compelling or procuring the use of any other form, or interrupting any minister using the same;

first offence, £10;

second offence, £20;

third offence, forfeiture of goods, and imprisonment for life;

In default of payment of penalty on first offence, three months' imprisonment;

former offences in using various forms of prayer pardoned.

All ministers shall celebrate divine service, &c. according to the said Book of Common Prayer.

II. Penalty on ministers refusing to use the said Book of Common Prayer;

or wilfully using any other form of open prayer;

or preaching, &c. in derogation of the said book;

first offence, loss of profits of one benefice for a year, and imprisonment for six months; second offence, one year's imprisonment, and deprivation of all benefices;



that then everye pson so convicte and soe not payinge the same shall for the same firste offence, in stede of the saide tenne poundes, suffer ymprisonement by the space of three monethes, without bayle or mayneprise ; and yf any pson or psons that for his seconde offence concernynge the pmisses shalbe convicte in fourme aforesaide doe not pay the some to be payde by vertue of his conyicōn in suche manner and fourme as the same ought to be payde, within sixe wekes next after his saide seconde conyicōn, that then everie pson soe convicte and not soe payinge the same shall for the same seconde offence, in stede of the saide twentie pounde, suffer ymprisonement duringe sixe monethes without bayle or mayne prise.

second  
offence,  
six months.

IV.  
Justices of  
assise may  
hear and  
determine  
offences.

AND it is ordeyned and enacted by thauctoritie aforesaide, that all and everie justicē of oyer and determyner or justices of assise shall have full power and auctoritie, in everie of their open and geñall sessions, to enquire heare and determyne all and all manner of offences that shalbe comytted or done contrarie to anye article conteyned in this p̄sent Acte, within the lymit of the cōmission to them directed, and to make p̄ces for thexecuōn of the same as they doe agaynste anye pson beinge endited before them of trespassse, or lawfullie convicted therof.

V.  
Bishops, &c.  
may join  
such  
justices of  
assise.

PROVIDED alwaies and be it enacted by the auctoritie aforesaide, that all and eveye archebisshopp and bisshopp shall or maye, at all tyme and tymes at his libtie and pleasure, joyne and associate him selfe by vertue of this Acte to the saide justices of oyer and determyner or (¹) the saide justicē of assise, at everie of the saide open and geñall sessions to be holden in any place within his dioces, for & to the inquirie hearing & det̄myning of thoffence aforesaide.

VI.  
Prayers in  
Latin, &c.  
may be read  
by learned  
persons, and  
in the uni-  
versities.

PROVIDED alwaies that it shalbe lafull to anye man that understandeth the Greke Latten and Hebrewe tongue, or other straunge tongue, to saye and have the saide prayers heretofore sp̄ified of mattens and evensonge in Latten or anye suche other tongue, sayinge the same privatlie as they doe understande : And for the further encouraging of learnynge in the tongues in the Unīversities of Cambridge and Oxforde to use and ēxcise in their cōen and open prayer in their chappells, beinge noe [parishes²] churches or other places of prayer, the mattens evensonge letanye and all other prayers, the holie Cōmunyon cōenly called the Masse excepted, p̄scribed in the saide booke p̄scribed in Greke Latten or Hebrewe ; anye thinge in this p̄sent Acte to the contrarie notwithstandinge.

VII.  
Psalms or  
prayers  
from the  
Bible  
allowed.

PROVIDED also that it shalbe lafull for all men, aswell in churches chappells oratories or other places, to use openlye any psalme or prayer taken out of the Bible at anye due tyme, not lettinge or om̄yttinge therby the service or anye parte therof men̄cōned in the saide booke.

VIII.  
Prayer  
books shall  
be provided  
in parish  
and cathed-  
ral  
churches.

PROVIDED also and be it enacted by thauctoritie aforesaide, that the booke concerninge the saide service shall, at the costē and charges of the parishoners of everie parishe & cathedrall churche, be attayned and gotten before the feaste of Penthecoste

next followinge or before ; and that all suche parishe and cathedrall churche or other placē, where the saide booke shalbe attayned and gotten before the saide feast of Penthecoste, shall within thre weke next after the saide booke so attayned and gotten use the saide service and putt the same in ure accordinge to this Acte.

AND be it further enacted by auctoritie aforesaide, that noe pson or psons shalbe at any tyme hereafter impeached or otherwise molested of or for anye of thoffences above mencioned hereafter to bee cōmytted or done contrarie to this Acte, unlesse he or they soe offendinge be therof endyted at the nexte geñall sessions to be holden before anye suche justices of oyer and determyner or justices of assise next after anye offence cōmytted or done contrarie to the tenor of this Acte.

IX.  
Limitation  
of prosecu-  
tion ; the  
first session  
after offence  
committed.

PROVIDED alwaies and be it ordeyned and enacted by the auctoritie aforesaide, that all & singuler lordes in the Parliament for the thirde offence above mencioned shalbe tried by their peeres. (¹)

X.  
Peers shall  
be tried by  
peers.

PROVIDED also and be it ordeyned and enacted by thauctoritie aforesaide, that the mayor of London, and all other mayors bayliffē and other hedd officers, of all and singuler citties boroughes and townes corporate within this realme Wales Calice and the marches of the same to the whiche justices of assise doe not cōmenlie repayre, shall have full power and auctoritie by vertue of this Acte to enquiry heare and determyne the offences above saide and everie of them, yerely within fyftene dayes after the feastē of Easter and St Michael Tharchangell, in like manner and fourme as justices of assise and oyer and determyner maye doe.

XI.  
Mayors, &c.  
of corpora-  
tions may  
hear and  
determine  
offences.

PROVIDED alwaies and be it ordeyned and enacted by thauctoritie aforesaide, that all & singuler archebisshoppes and bisshoppes, and everie of their chauncelors cōmissaries archdeacons and other ordinaries, havinge anye peculier eccliaſticall jurisdiōn shall have full power and auctoritie by vertue of this Acte as well to enquire in their vysitaōns and synode, and els where within their jurisdiōn at any other tyme or place to take accusaōns and informaōns, of all and everie the thinges above mencioned, done cōmytted or ppetrate within the lymitte of their jurisdiōns and auctoritie, and to punyshe the same by admonycion excōmynicaōn sequestraōn or deprivaōn and other censures and p̄cesse, in like forme as heretofore hathe bene used in like cases by the Kingē eccliaſticall lawes.

XII.  
Offences  
may be  
punished  
by eccle-  
siastical  
jurisdiction.

PROVIDED alwayes and be it enacted, that whatsoever parson offendinge in the pmisses shall for the firste offence receyve punyshment of the ordinarie, havinge a testimoniall thereof under the saide ordynaries seale, shall not for the same offence eftsones be convented before the justices ; and likewise receyvinge for the saide firste offence punyshment by the justicē he shall not for the same offence eftsones receyve punyshment of the ordinarie ; any thinge conteyned in this Acte to the contrarie notwithstandinge.

XIII.  
First offence  
punishable  
only once,  
either by  
spiritual or  
temporal  
courts, and  
not by both.

¹ to O.

² parishe O.

¹ as in cases of highe treason O. struck through with a pen.



## 5 &amp; 6 EDWARD VI. CHAPTER I.

AN ACTE for the Unyformytie of Comon Prayer and admynistraçõn of the Sacrament<sup>e</sup>.

Form of  
common  
prayer, &c.  
established;

WHEARE there hath bene a verie godlye ordre set-  
forthe by auctoritie of Parliament for cõmon prayer  
and admynistraçõn of the sacrament<sup>e</sup>, to be used in the  
mother tongue within the Church of Englande,  
agreable to the worde of God and the primatyve  
Church, verie comfortable to all good people desyr-  
inge to lyve in Christian conÿsaçõn, and most pfytable  
to the estate of this realme, [- - -<sup>1</sup>] the whiche the  
mercie favor and blessinge of Almyghtie God ys in  
noe wise so redyllye and plenteouslye powred as by  
cõmon prayers due usinge of the sacrament<sup>e</sup> and often  
preachinge of gospell, withe the devoçõn of the hearers;  
and yet thys notwithstandinge, a greate nombre of  
people in diÿse part<sup>e</sup> of this realme followinge their  
owne sensualitye and lyvinge, either without know-  
ledge or due feare of God, doe wilfullye and damp-  
nablye before Almyghtie God abstayne and refuse to  
come to their parishe churches and other places where  
cõmon prayer admynistraçõn of the sacrament<sup>e</sup> &  
preachinge of the worde of God ys used, upon the  
Sondayes and other dayes ordeyned to be holye dayes:  
FOR REFORMAçõN hereof be it enacted by the Kinge  
our soveraigne lorde withe the assent of the lordes and  
cõmons in this p̄sent Parliament assembled and by  
thauctoritie of the same, that from and after the feaste  
of All Sainct<sup>e</sup> next cõmynge, all and everie pson and  
psons inhabitinge within this realme or anye other the  
Kinges Majesties ðnyons, shall diligentlye and faith-  
fullye, havinge noe lafull or reasonable excuse to be  
absent, endeavor them selves to resorte to their parishe  
church or chappell accustomed, or upon reasonable  
lett thereof to some usuall place where cõmon prayer  
and suche service of God shalbe used in suche tyme of  
lett upon everie Sondaye and other dayes ordeyned  
and used to be kepte as holydayes, and then and there  
to abyde orderlye and soberlye duringe the tyme of  
the cõmon prayer preaching<sup>e</sup> or other s̄vice of God  
there to be used and mynistred; upon payne of  
punyshement by the censures of the Church.  
[Sect. 1., so far as the same affects persons dissenting  
from the worship or doctrines of the United Church  
of England and Ireland, and usually attending some  
place of worship other than the Established Church,  
rep., the following proviso being added to the repeal,—  
Provided always, that no pecuniary penalty shall be  
imposed upon any person by reason of his so absenteing  
himself as aforesaid, 9 & 10 Vict. c. 59. s. 1.]

negligence  
in attend-  
ance at  
church;

all persons  
shall attend  
public wor-  
ship on  
Sundays  
and holi-  
days, on  
pain of  
spiritual  
censures.

II.  
The clergy  
charged to  
promote the  
execution of  
this law.

AND for the due execuçõn hereof the King<sup>e</sup> moste  
excellent Majestie the lordes temporall and all the  
cõmons in this p̄sent assembled, doeth in Gods name  
[earnestlye<sup>2</sup>] requyre and chardge all the arche-  
bisshoppes bisshoppes and other ordynaries, that they  
shall endeavor them selves to the uttermoste of their  
knowledge that the due and true execuçõn hereof  
maye be had thoroughout their dioces and chardg<sup>e</sup>, as  
they will answer before God for suche evill<sup>e</sup> and  
plagues wherewith Almyghtie God maye justlye  
punyshe his people for neglectinge this good and  
holesome lawe.

III.  
Arch-  
bishops, &c.  
authorized

AND for their auctoritye in this behalfe, be it further  
likewise enacted by thauctoritie aforesaid, that all and

singuler the same archebyshoppes bisshoppes and all  
other their officers eÿcisinge eccliaſticall jurisdiçõn,  
aswell in place exempte as not exempte within their  
diocesse, shall have full power and auctoritie by this  
Acte to refourme correcte and punyshe by censures of  
the Church, all and singuler psons which shall offende  
within anye their jurisdiçõns or dioceses after the  
saide feaste of All Sainct<sup>e</sup> next cõmynge against this  
Acte and statute; and any other lawe statute privilege  
libertye or p̄vysion heretofore made had or suffred to  
the contrye notwithstandinge.

AND because their hathe arrisen in the use and  
eÿcise of the foresaide cõmon s̄vice in the Church  
heretofore setforthe, diÿse doubt<sup>e</sup> for the fasshion and  
manner of the mynistraçõn of the same, rather by the  
curiositie of the mynistr and mystakers, then of anye  
other worthie cause; therefore aswell for the more  
playne and manyfeste explanaçõn herof as for the  
more p̄fecçõn of the saide ordre of cõmon s̄vice, in  
some places where it is necessarie to make the same  
prayers and fasshion of s̄vice more earnest and fyte  
to stirre Christian people to the true honoring of  
Almighty God; the King<sup>e</sup> most excellent Majestie,  
withe the assent of the lordes and cõmons in this  
p̄sent Parliament assembled and by thauctoritie of the  
same, hath caused the foresaide ordre of cõmon s̄vice,  
entytuled The Booke of Cõmon Prayer, to be faith-  
fullye and godlye pused explained and made fullye  
p̄fecte, and by the foresaide auctoritie hathe annexed  
and joynd it so explained and p̄fecte to this p̄sent  
Estatute (<sup>1</sup>), addinge also a fourme and manner of  
makinge and consecratinge archebisshoppes bisshoppes  
priest<sup>e</sup> and decons, to be of lyke force auctoritie and  
value as the same lyke foresaide booke, entituled The  
Booke of Cõmon Prayer was before, and to be accepted  
receyved used and estemed in lyke sorte and manner,  
and withe the same clauses of p̄vysions and excepçõns  
to all intent<sup>e</sup> construcçõns and purposes, as by the  
Acte of Parliament made in the seconde yere of the  
King<sup>e</sup> Majesties raigne, was ordeyned and lymitted  
expressed and appoynted for the unyformytie of s̄vice  
and admynistraçõn of the sacrament<sup>e</sup> thoroughe out  
the realme, upon suche seÿvall paynes as in the saide  
Acte of Parliament ys expressed: And the saide  
former Acte to stande in full force and strengthe to all  
intent<sup>e</sup> and construcçõns, and to be applyed practysed  
and put in ure to and for the establishinge of the Booke  
of Cõmon Prayer nowe explained and hereunto annexed,  
and also the saide fourme of makinge of archebisshoppes  
bisshoppes priest<sup>e</sup> and deacons hereunto annexed, as yt  
was for the former booke.

\*\* V. And By thauctoritye aforesaide it is nowe  
further enacted, that yf any manner of pson or psons  
inhabytynge & beinge within this Realme, or any other  
the King<sup>e</sup> Majesties ðnyons, shall after the saide  
Feaste of All Sainct<sup>e</sup>, willinglye and wittinglye heare  
and be p̄sent at any other manner or fourme of Cõmon  
Prayer, of Administraçõn of the sacrament<sup>e</sup>, of makinge  
of Mynisters in the Churches, or of anye other Rites  
conteyned in the Booke annexed to this Acte (<sup>1</sup>) then is

to punish  
offenders by  
censures of  
the Church.

IV.  
The Book of  
Common  
Prayer, &c.  
perused and  
perfected,  
established  
under the  
sanctions of  
St. 2, 3 E.  
VI. c. 1.

Penalty on  
persons  
being  
present at  
any other  
form of  
Common  
Prayer, &c.,  
imprison-  
ment; for  
1st offence  
six months;  
2nd twelve  
months, 3rd  
for life.

<sup>1</sup> upon O.

<sup>2</sup> earnestlye O.

<sup>1</sup> The book does not appear on the roll, or in the Parliament Office.



mençoned and setforthe in the saide Booke, or that ys cont<sup>r</sup>ye to the fourmer of sondrie p<sup>r</sup>visions and excepçions conteyned in the foresaide forme<sup>r</sup> Estatute, and shalbe thereof convicted accordinge to the Lawes of this Realme before the Justice<sup>ç</sup> of Assise Justice<sup>ç</sup> of Oyer and Determyner Justice<sup>ç</sup> of Peace in their Sessions or any of them, by the verdicte of twelve men, or by his or their owne confession or otherwise, shall for the firste offence suffer emprysonment for sixe monethes without bayle or maynprise, and for the seconde offence being likewise convicted as ys abovesaide, emprisonment for one hole yere, and for the thirde offence in like manner emprisonment duringe hys or their lyeffe.

VI. And for the more knowledge to be given hereof and better observaçon of this Lawe, be it enacted by

the auctoritye aforesaide, that all and singuler Curates shall uppon one Sondaye everie quarter of the yere, duringe one hole yere next followinge the foresaide Feast of All Sainct<sup>ç</sup> next comynge, reade this p<sup>r</sup>sent Acte in the Churche at the tyme of the most Assemblie, and likewise once in everie yere following ; At the same tyme declaringe unto the people by thauctorite of the Scripture, howe the marcie & goodnes of God hathe in all ages bene shewed to his People in their necessities and extremities by meanes of hartie and faithfull prayers made to Almightye God ; especiallie where people be gathered together withe one faith and mynde to offer upp their hart<sup>ç</sup> by prayer, as the beste sacrific<sup>ç</sup> that Christian men can yelde.\*\*

This Act shall be read in all churches annually.

# 1 ELIZABETH. CHAPTER I.

AN ACTE restoring to the Crowne thaũcyent Jurisdiction over the State Ecclesiasticall and Spũall, and abolyshing all Forreine Power repugnaunt to the same.

Most humble beseshen yo<sup>r</sup> most excellent Matie yo<sup>r</sup> faithefull and obedient subjectes the lordes spũall and temporall, and the cõmons in this yo<sup>r</sup> p<sup>r</sup>nte Plament assembled ; that where in time of the raigne of yo<sup>r</sup> most dere father of worthie memorie King Henry Theight, divers good lawes and statutes were made and established, aswell for thutter extinguishment and putting away of all usurped and forraine powers and authorities out of this yo<sup>r</sup> realme and other yo<sup>r</sup> Highnes dominions and countreis, as also for the restoring and uniting to the imperiall crowne of this realme thaũcient jurisdicçons auctoritees superiorities and preheminencies to the same of right belonging and appertaining ; by reason wherof wee yo<sup>r</sup> most humble and obedient subjectes, from the five and twentie yere of the reigne of yo<sup>r</sup> said dere father, were continually kepte in good order, and were disburdened of divers greate and intollerable charges and exacçons before that time unlawfully taken and exacted by suche forreine power and auctoritee as before that was usurped, untill suche time as sll the said good lawes and statutes by one Act of Plam<sup>t</sup> made in the first and seconde yerres of the raignes of the late King Philipp and Quene Marye, yo<sup>r</sup> Highness syster, entituled An Acte repealing al statutes articles and provisions made against the sea apostolike of Rome since the twentithe yere of King Henry Theight, and also for the establishment of all spũall and ecclesiasticall possessions and hereditamentes conveyed to the laytie, were all clerely repealed and made voide, as by the same Acte of repeale more at large doth and maye appeare : By reason of whiche Acte of repeale yo<sup>r</sup> said humble subjectes were eftesones brought under an usurped forreine power and auctoritee, and yet doo remaine in that bondage, to the intollereable chardges of youre loving subjectes, yf some redresse by thauctorite of this yo<sup>r</sup> Highe Courte of Plament withe thassent of yo<sup>r</sup> Highnes, bee not had and provided : MAIE IT THEREFORE please yo<sup>r</sup> Highnes, for the repressing of the said usurped forreine power, and the restoring of the rightes jurisdicçon and preheminences appartaining to the imperiall crowne of this yo<sup>r</sup> realme, that it may be enacted by thauctorite of this p<sup>r</sup>nte Plam<sup>t</sup>, that the said Acte made in the said first and seconde yerres of

the reignes of the said late King Philipp and Quene Marie, and all and every branche clauses and articles therein conteyned (other then suche branches clauses and sentences as hereafter shalbe excepted) maye from the last daye of this session of Plament, by auctoritee of this p<sup>r</sup>nte Plament, be repealed, and shall from thensforthe be utterly voide and of none effecte.

AND that also for the reviving of divers of the said good lawes and statutes made in the time of yo<sup>r</sup> said dere father, it maye also please yo<sup>r</sup> Highnes, that one Acte and statute made in the three and twentithe yere of the raigne of the said late King Henrye Theight, entituled, An Acte that no person shalbe cited out of the diocese where he or she dwellethe, excepte in certayne cases ; and one other Acte made in the xxiiij<sup>th</sup> yere of the raigne of the said late King, entituled, An Act that appeales in suche cases as hathe bene used to be pursued to the sea of Rome, shall not bee from hensforthe had ne used but within this realme ; and one other Acte made in the xxv<sup>th</sup> yere of the said late King (!), concerning restraint of payment of annates and first fruites of archbishoprikes and bishoprikes to the sea of Rome ; and one other Acte in the said xxv yere, entituled, An Acte concerning the submission of the clergie to the Kinges Matie ; and also one Acte made in the said xxv<sup>th</sup> yere, entituled, An Acte restraining the payment of annates or first fruites to the Bishoppe of Rome, and of the electing and consecrating of archbishoppes and bishoppes within this realme ; and one other Acte made in the said xxv yere, entituled, An Acte concerning the exoneraçon of the Kinges subjectes from exacçons and impositions heretofore paide to the sea of Rome, and for having lycenses and dispensaçons within this realme w<sup>th</sup>out suing further for the same ; and one other Acte made in the xxvj<sup>th</sup> yere of the sayd late King, entituled, An Acte for nominaçon and consecration of suffraganes within this realm ; and also one other Acte made in the xxvij<sup>th</sup> yere of the reigne of the said late King, entituled, An Acte for the release of suche as have

II.  
Certain statutes revived, viz.,  
23 H. VIII.  
c. 9. foreign citations ;  
24 H. VIII.  
c. 12. appeals to Rome ;  
23 H. VIII.  
c. 20. payment of annates ;  
25 H. VIII.  
c. 19. submission of the clergy ;  
25 H. VIII.  
c. 20. consecrating bishops, &c.  
25 H. VIII.  
c. 21. exactions from Rome ;

26 H. VIII.  
c. 14. suffragans ;  
28 H. VIII.  
c. 16. dispensations ;

<sup>1</sup> The Act printed as 23 Hen. VIII. chap. XX., did not receive the royal assent until 25 Hen. VIII.

Statutes made temp. Hen. VIII. against all foreign jurisdiction, repealed by Stat. 1 & 2 P. & M. c. 8.

Recited Stat. 1 & 2 P. & M. c. 8. repealed.



obteyned pretended lycences and dispensations from the sea of Rome; and all and every branches wordes and sentences in the said severall Actes and statutes conteyned, by auctoritee of this pntre Plamt from and att all tymes after the last daye of this session of Plamt, shalbee revived and shall stande and bee in full force and strengthe to all intentes construccōns and purposes; and that the branches sentences and woordes of the said severall Actes and every of them, fromthensforthe shall and may be judged demed and taken to extende to yo<sup>r</sup> Highnes yo<sup>r</sup> heires and successours, as fully and lardgelye as ever the same Actes or anye of them did extende to the said late King Henrye Theight yo<sup>r</sup> Highnes father.

AND that it may also please yo<sup>r</sup> Highnes that it maye bee enacted by thauctorite of this pntre Plamt, that so muche of one Acte or statute made in the xxxij<sup>th</sup> yere of the reigne of yo<sup>r</sup> sayd dere father King Henrye Theight, entituled, An Acte concerning precontractes of mariages, and touching degrees of consanguinitee, as in the time of the late King Edwarde the Syxthe your Highnes most dere brother by one other Acte or statute was not repealed; and also one Acte made in the xxxvij<sup>th</sup> yere of the reigne of the sayd late King Henrye the Eight, entituled, An Acte that doctours of the cyvill lawe being married, maye exercise ecclesiasticall jurisdictyon, and all and every branches and articles in the sayd twoo Actes last mentioned and not repealed in the tyme of the sayd late King Edwarde the Syxte, maye fromthensforthe lykewise stande and bee revived and remayne in their full force and strengthe to all intentes and purposes; any thing conteyned in the sayd Acte of repeale before mentioned or any other matter or cause to the contrary notwithstanding.

AND that yt maye also please yo<sup>r</sup> Highnes that it maye bee further enacted by thaucthorite aforesaid, that all other lawes and statutes, and the branches and clauses of any Acte or statute, repealed and made voide by the sayd Acte of repeale made in the tyme of the said late King Philipp and Quene Marye, and not in this pnt Acte specially mentioned and revived, shall stande remaine and bee repealed and void, in suche like maner and fourme as they were before the making of this Acte; any thing herein contained to the contrary notwithstanding.

AND that it may also please yo<sup>r</sup> Highnes that it maye bee enacted by thauctoritee aforesaid, that one Acte and statute made in the first yere of the reigne of the late King Edwarde the Sixte, yo<sup>r</sup> Maties most dere brother, entituled, An Acte against suche psons as shall unreverentlye speake againste the Sacrament of the Bodye and Bloodde of Christ, cōmonly called the Sacrament of the Aulter, and for the receiving thereof under bothe kindes; and all and every branches clauses and sentences therein contained, shall and maye likewise from the last daye of this session of Plamt, bee revived and fromthensforthe shall and maye stande remaine and bee in full force strengthe and effecte to all intentes construccōns and purposes, in suche like maner and fourme as the same was at any time in the first yere of the reigne of the said late King Edwarde the Sixte; any lawe statute or other matter to the contrary in any wise notw<sup>th</sup>standing.

AND that also yt may please yo<sup>r</sup> Highnesse that it may be further established and enacted by thauctorite aforesaid, that one Acte and statute made in the firste and seconde yeres of the said late King Philipp and Quene Marye, entituled, An Acte for the reviving of three statutes made for the punishment of heresies; and also the said three statutes mentioned in the sayd Acte

and by the same Acte revived, and all and every branches articles clauses and sentences conteyned in the said severall Actes or statutes and every of them, shalbe from the last daye of thys session of Plamt, demed and remaine utterly repealed voide and of none effecte to all intentes and purposes; anye thing in the said severall Actes or any of them contained, or any other mater or cause to the contrary notwithstanding.

AND to thintent that all usurped and forreine power and auctoritee spirituall and temporall may for ever bee clerely extinguished and never to be used nor obeied within this realme or any other yo<sup>r</sup> Maties dominions or cōtreis: Maye yt please yo<sup>r</sup> Highnes that it may be further enacted by thauctoritee aforesaid, that no forreine prynce pson prelate state or potentate spūall or temporall shall at any tyme after the last daye of this session of Plamt, use enjoy or exercise any maner of power jurisdictōn supioritee auctorite preheminece or privilege spūall or ecclesiasticall within this realme or within any other yo<sup>r</sup> Maties dominions or countreis that now be or hereafter shalbee, but fromthensforthe the same shalbee clerely abolished out of this realme and al other yo<sup>r</sup> Highnes dominions for ever; any statute ordinance custome constituōns or any other mater or cause whatsoever to the contrary in any wise notwithstanding.

AND that also yt may lykewise please yo<sup>r</sup> Highnes that it maye be established and enacted by thauctorite aforesaid, that suche jurisdictions privileges superiorities and prehemineces spūall and ecclesiasticall, as by any spirituall or ecclesiasticall power or aucthorite hathe heretofore bene or may lawfully be exercised or used for the visitaōn of the ecclesiasticall state and psons, and for reformaōn order and correcōn of the same and of all maner of errors heresies scismes abuses offences contemptes and enormities, shall for ever by auctorite of this pnt Plamt be united and annexed to the imperiall crowne of this realme; \* \* ; And that yo<sup>r</sup> Highnes yo<sup>r</sup> Heires and Successours Kinges or Quenes of this Realme, shall have full power and auctoritee by vertue of this Acte by fres Patentees under the Greate Seale of Englande, to assigne name and aucthorise when and as often as yo<sup>r</sup> Highnes yo<sup>r</sup> Heires or Successours shall thinke meete and convenient, and for such and so long tyme as shail please yo<sup>r</sup> Highnes yo<sup>r</sup> Heires or Successors, suche pson or psons being naturall borne subjectes to yo<sup>r</sup> Highnes yo<sup>r</sup> Heires or Successors as yo<sup>r</sup> Matie yo<sup>r</sup> Heires or Successours shall thinke meete, texercise use occupie and execute under yo<sup>r</sup> Highnes yo<sup>r</sup> Heires and Successours, all manner of Jurisdictōns Privileges and Prehemineces in any wise touching or concerning any Spūall or Ecclesiasticall Jurisdictōn within theis yo<sup>r</sup> Realmes of Englande and Irelande or any other yo<sup>r</sup> Highnes Dominions or Countreis, and to visite refourme redres order correcte and amende all such Erroures Heresies Scismes Abuses Offences Contemptes and Enormities whatsoever, which by any maner Spūall or Ecclesiasticall Power Auctoritee or Jurisdictōn can or maye lawfullye be reformed ordered redressed corrected restrained or amended, to the Pleasure of Almightye God thencrease of vertue and the Conservaōn of the Peacé and Unitie of this Realme; And that suche pson or psons so to bee named assigned aucthorised and appointed by yo<sup>r</sup> Highnes yo<sup>r</sup> Heires or Successours, after the said fres Patentees to him or them made and delivered as is aforesaid, shall have full Power and Auctorite by vertue of this Acte and of the said fres Patentees, under yo<sup>r</sup> Highnes yo<sup>r</sup> Heires or Successours, texercise use and execute

the said statutes extended to the Queen, her heirs and successors.

III. St. 32 H. VIII. c. 38. as to marriages, as amended by 2, 3 E. VI. c. 23.

37 H. VIII. c. 17. doctors of law; revived and confirmed.

IV. All statutes repealed by 1 & 2 P. & M. c. 8. and not hereby revived, shall continue repealed.

V. St. 1 E. VI. c. 1. Sacrament of the Altar, revived.

VI. 1 & 2 P. & M. c. 6. 5 R. II. st. 2. c. 5. 2 H. IV. c. 15. 2 H. V. c. 7. as to heresies, repealed.

VII. All foreign spiritual jurisdiction abolished.

VIII. All spiritual jurisdiction united to the crown:

Commissioners may be appointed by the Crown to exercise all Spiritual and Ecclesiastical Jurisdiction.



all the Premises according to the tenor & effecte of the said Ires Patentes; Any Mater or Cause to the contrarye in Any wise notwithstanding.\*\*

IX.  
Oath of the  
supremacy  
of the  
crown, to be  
taken by  
arch-  
bishops,  
bishops,  
judges, and  
all ministers  
and officers,  
spiritual  
and tem-  
poral.

AND for the better observa<sup>o</sup>n and maintenance of this Act, maye it please yo<sup>r</sup> Highnes that it maye be further enacted by thauctorite aforesaid, that all and every archebishoppe bishoppe and all and every other ecclesiasticall pson, and other ecclesiasticall officer and minister, of what estate dignitie preheminance or degree soever he or they bee or shalbee, and all and every temporall judge justicer mayor and other laye or temporall officer and minister, and every other pson having yo<sup>r</sup> Highnes fee or wagys within this realme, or any yo<sup>r</sup> Highnes dominions, shall make take and receyve a corporall othe upon the Evangelist, before suche pson or psons as shall please yo<sup>r</sup> Highnes yo<sup>r</sup> heires or successours under the greateseale of Eng- lande to assigne and name taccepte and take the same, according to the tenour and effect hereafter following, that is to say: I A.B. doo utterly testifie and declare in my conscience, that the Quenes Highnes is thonelye supreme governour of this realme and of all other her Hignes dominions and countreis, aswell in all sp<sup>u</sup>all or ecclesiasticall thinges or causes as temporall, and that no forreine prince pson prelate state or potentate hathe or oughte to have any jurisdic<sup>o</sup>n power superi- oritee preheminance or auctoritee ecclesiasticall or sp<sup>u</sup>all within this realme, and therefore I doo utterly renounce and forsake all forraigne jurisdic<sup>o</sup>ns powers supiorities and authorities, and doo promise that from- hensforthe I shall beare faithe and true allegiance to the Quenes Highnes her heires and lawfull successours, and to my power shall assist and defende all juris- dic<sup>o</sup>ns preheminences privileges and authorities granted or belonging to the Quenes Highnes her heires and successours, or united or annexed to thimperial crowne of this realme: So helpe me God and by the contentes of this booke. [Rep., Stat. Law Rev. Act, 1863.]

X.  
Penalty on  
refusing to  
take the  
Oath, Loss  
of promo-  
tion, Office  
&c., and  
Disability.

\* \* And that it may be also enacted, That yf any suche Archebishoppe Bisshoppe or other Ecclesias- ticall Officer or Minister, or any of the said Temporall Judges Justiciaries or other Leye Officer or Minister, shall pemptorilie or obstinatelie refuse to take or receive the said Othe, that then he so refusing shall forfeite and lose, onely during his lyef, all and every Ecclesiasticall and Sp<sup>u</sup>all Promo<sup>o</sup>n Benefice and Office, and every Temporall and Laye Promo<sup>o</sup>n and Office whiche he hathe solye at the tyme of suche Refusall made; And that the whole Title Interest and Incumbencye in every suche Promo<sup>o</sup>n Benefice and Office, as against such pson onelye so refusing during his lief, shall clearly cease and bee voide as though the p<sup>t</sup>ie so refusing were deade; And that also all and every such pson and psons so refusing to take the said Othe shall immediatlie after such Refusall be fromthensforthe during his lief disabled to retheyne or exercise any Office or other Promo<sup>o</sup>n whiche he at the tyme of such Refusall hathe joyntlye or in comon withe any other pson or psons; \* \* And that all and every pson and psons that at any time hereafter shall bee preferred promoted or col- lated to any archebishoprike or bishopricke, or to any other sp<sup>u</sup>all or ecclesiasticall benefice promo<sup>o</sup>n dignitie office or ministerye, or that shalbe by your Highnes yo<sup>r</sup> heires or successours preferred or pro- moted to any temporall or laye office ministerye or service within this realme or in any yo<sup>r</sup> Highnes dominions, before he or they shall take upon him or them to receive use exercise supplye or occupie anye

Oath to be  
taken before  
exercising  
office.

suche archbishoprick bishoprick promotion dignitie office ministerye or service, shall likewise make take and receive the said corporall othe before mentioned upon the Evangelyst, before suche psons as have, or shall have auctoritye tadmitte, any suche pson to anye suche office ministerye or service, orells before suche persone or persones as by your Highnes your heyres or successours by commission under the greateseale of Englande shalbe named assigned or appointed to minister the sayd othe. [Rep. so far as relates to any oath to be taken by a person who is ordained or licensed to a stipendiary curacy, or presented, instituted, collated, elected, or licensed to any benefice, perpetual curacy, lectureship, or preachership, 28 & 29 Vict. c. 122. s. 15.]

AND that it maye likewise be further enacted by thauctorite aforesaid, that if anye suche psone or psones as at any tyme hereafter shalbee promoted preferred or collated to anye suche promo<sup>o</sup>n sp<sup>u</sup>all or ecclesiasticall benefice office or ministerye, or that by yo<sup>r</sup> Highnes yo<sup>r</sup> heires or successo<sup>r</sup>s shalbe promoted or preferred to any temporall or laye office ministerye or service shall and doo peremptorilie and obstinatelie refuse to take the same othe so to him to bee offredd, that then he or they so refusing shall presentlie be judged disabled in the lawe to receive take or have the same promo<sup>o</sup>n sp<sup>u</sup>all or ecclesiasticall, the same temporall office ministerye or service, within this realme or anye other yo<sup>r</sup> Highnes dominions to all intentes construc<sup>o</sup>ns and purposes. [Rep. as men- tioned with respect to part of sect. 10.]

AND that yt maie be further enacted by thauctho- ritee aforesaid, that all and every pson and psons temporall suing lyverie or oustre le maine out of thandes of yo<sup>r</sup> Highnes yo<sup>r</sup> heires or successours, before his or their lyverie or oustre le maine sued foorth and allowed, and every temporall pson [and <sup>1</sup>] psons dooing any homage to yo<sup>r</sup> Highnes your heires or successours, or that shalbee received into service withe yo<sup>r</sup> Highnes yo<sup>r</sup> heires or successours, shall make take and receive the said corporall othe before mentioned, before the lorde chancello<sup>r</sup> of Englande or the lorde keper of the greateseale for the tyme being, or before suche pson or psons as by yo<sup>r</sup> Highnes yo<sup>r</sup> heires or successours shalbe named and appointed taccepte or receive the same; and that also all and every pson and psons taking orders, and all and every other pson and psons whiche shalbe promoted or preferred to any degree of lerning in anye universitie within this yo<sup>r</sup> realme or dominions, before he shall receive or take anye suche orders or bee preferred to anye suche degree of learning, shall make take and receive the said othe by this Acte set foorth and declared as ys aforesaid, before his or their ordinarie comissarie chauncellour or vice-chauncellour or their sufficient deputies in the said universitie.

PROVIDED alwaies and that it maye be further enacted by thauctorite aforesaid, that if any pson having annye estate of inheritance in any temporall office or offices shall hereafter obstinatly and pemto- rilie refuse taccepte and take the said othe as is afore- said, and after at any time during his lyef shall willingly require to take and receive the said othe, and so doo take and accept the same othe before any pson or psons that shall have lawfull auctoritye to minister the same, that then every such pson imediatlie after he hathe so received the same othe shalbe vested demed and judged in like estate and possession of the

XI.  
Persons re-  
fusing to  
take the  
oath on  
promotion,  
&c. declared  
disabled.

XII.  
Persons  
suing livery,  
donig  
homage, &c.  
shall take  
the said  
oath;

and per-  
sons taking  
orders or  
degrees in  
universities.

XIII.  
Persons  
having  
offices in  
fee, &c.  
taking the  
oath, after  
refusal, shall  
be restored.



said office as he was before the said refusall, and shall and maye use and exercise the sayd office in suche maner and fourme as he shoulde or might have doon before suche refusall; any thing in this Acte conteyned to the contrarye in any wise notwithstanding.

XIV.  
Penalty on persons who by writing, preaching, &c. shall maintain any foreign spiritual jurisdiction within the realm;

AND for the more sure observacōn of this Acte and thutter extinguishment of all forraigne and usurped power and authoritie, maye it please yo<sup>r</sup> Highnes that it maye be further enacted by thauctorite aforesayd, that yf any pson or psons dwelling or inhabiting within this yo<sup>r</sup> realme, or in any other yo<sup>r</sup> Highnes realmes or dominions, of what estate dignitie or degree soever he or they bee, after thende of thirtie dayes next after the determinacōn of this session of this p<sup>nt</sup>e Pliam<sup>t</sup>, shall by writing printing teaching preaching expres woordes dede or acte advisedlye maliciouslie and directlye affirme holde stande withe set foorth the maintayne or defende thauctorite preheminance power or jurisdiction spūall or ecclesiasticall of any forreine prince prelate pson state or potentate whatsoever heretofore claimed used or usurped within this realme or any dominion or countrey being w<sup>thin</sup> or under the power dominion or obeysance of yo<sup>r</sup> Highnes, or shall advisedlye maliciouslie and directlie put in ure or execute anye thing for thextolling advancement setting foorth the maintenance or defence of any suche pretended or usurped jurisdiction power preheminance or auctoritee, or anye parte therof, that then every suche pson and psons so doing and offending their abettoures aidoures procurours and counsellours, being therof lawfully convicted and attainted according to the due order and course of the cōmon lawes of this realme, for his or their first offence shall forfeite and lose unto yo<sup>r</sup> Highnes yo<sup>r</sup> heires and successours, all his and their gooddes and cattelles aswell real as psonall; \* \* And if any suche pson so convicted or attainted shall not have or be woorth of his proper Goodes and Cattels to the value of Twentie Powndes at the tyme of suche his Conviction or Attainder, that then every suche pson so convicted and attainted over and besides the forfeiture of all his said Goodes and Cattalles shall have and suffer Imprisonement by the space of one hole yere without Baile or Mainepriise; And that also all and every the Benefices Prebendes and other Ecclesiasticall Promocōns and Dignities whatsoever of every Spūall Pson so offending and being attainted, shall immediatlie after suche Attainder be utterly voide to all Intentes and purposes as thoughtincumbent therof were deade, and that the Patron and Donour of every suche Benefice Prebende Spūall Promocōn and Dignitie shall and maye lawfullie present unto the same, or gyve the same in suche maner and fourme as if the sayd Incumbent were deade; And if anye suche Offendor or Offenders after such Convicōn or Attainder doo eftesoones cōmit or doo the said Offences or any of them in maner and fourme aforesaide, and bee therof duellie convicted and attainted as is aforesaid, that then every such Offendor and Offendours shall for the same Seconde Offence incurre into the Dangers Penalties and Forfeitures ordeined and provided by the Statute of Provision and Preminire made in the xvij<sup>th</sup> yere of the Reigne of King Richard the Seconde; And if any such Offendor or Offendours at any time after the saide seconde Convicōn and Attainder doo the thirde time cōmit and doo the said Offences or any of them in manner and fourme aforesaid, and bee therof duellie convicted and attainted as is aforesaid, that then every suche Offence or Offences shallbee demed and adjudged Highe Treason, and that thoffendour and Offen-

doures therin being therof lawfully convicted and attainted according to the Lawes of this Realme, shall suffer Paines of Deathe, and other Penalties Forfeitures and Losses, as in Cases of Highe Treason by the Lawes of this Realme. \* \* ]So much of this Act as makes it punishable to do any of the acts in this section mentioned, or to abet, aid, procure, or counsel any person so offending, rep., the following provisoes being added to the repeal,—Provided always, and be it declared, that nothing in this enactment contained shall authorize or render it lawful for any person or persons to affirm, hold, stand with, set forth, maintain, or defend any such foreign power, pre-eminence, jurisdiction, or authority, nor shall the same extend further than to the repeal of the particular penalties and punishments therein referred to, but in all other respects the law shall continue the same as if this enactment had not been made: Provided further, that if any person in holy orders according to the rites and ceremonies of the United Church of England and Ireland shall affirm, hold, stand with, set forth, maintain, or defend any such foreign power, pre-eminence, jurisdiction, or authority, such person shall be incapable of holding any ecclesiastical promotion, and, if in possession of any such promotion, may be deprived thereof by due course of law, in the same manner as for any other cause of deprivation, 9 & 10 Vict. c. 59. s. 1.]

AND also that yt maie likewise please yo<sup>r</sup> Highnes that it maye be enacted by thauctorite aforesaid, that no maner of pson or psons shalbe molested or impeached for any thoffences aforesaid cōmitted or ppetrated onelie by preaching teaching or woordes, onles hee or they be therof lawfullye endicted within the space of one half yere nexte after his or their offences so cōmitted; and in case any pson or psons shall fortune to bee imprisoned for any of the said offences cōmitted by preaching teaching or woordes onelye, and bee not therof indicted within the space of one half yere next after his or their suche offence so cōmitted and doone, that then the said pson so imprisoned shall be sett at lybertie and bee no longer deteyned in prison for any suche cause or offence.

PROVIDED alwaies and be it enacted by thauctoritee aforesaid, that this Acte or any thing therein contained shall not in any wise extende to repeale any clause matter or sentence contained or specified in the said Acte of repeale made in the said first and seconde yeres of the reignes of the said late King Philippe and Quene Marye as dothe in any wise touche or concerne anye matter or case of preminire, or that dothe make or ordeine any matter or cause to bee within the case of preminire, but that the same for so muche onely as toucheth or concernethe any case or matter of preminire, shall stande and remaine in suche force and effecte as the same was before the making of this Acte; any thing in this Acte contained to the contrary in any wise notwithstanding

\* \* Provided also and be it enacted by thauctoritee aforesaid, That this Acte or any thing therein contained shall not in annye wise extende or be prejudicial to any pson or psons for any Offence or Offences cōmitted or doone or hereafter to be cōmitted or doone contrary to the Tenour and Effecte of anny Acte or Statute nowe revived by this Acte, before thende of xxx<sup>ty</sup> days next after thende of the Session of this p<sup>nt</sup> Pliam<sup>t</sup>; Any thinge in this Acte conteyned or anye other matter or cause to the contrarye notwithstanding. \* \*

XV.  
Limitation of prosecution for preaching, &c. half a year.

XVI.  
St. 1 & 2 P. & M. c. 8. continued in force as to preminire.

XVII.  
Commencement of this Act as to Statutes revived.

First offence, forfeiture of goods, &c.;

and if not worth £20, One Year's Imprisonment.

Benefices of Spiritual Persons to become void.

Second offence, Preminire as under St. 16. R. II., c. 5:

Third offence, High Treason.



XVIII.  
Peers shall  
be tried by  
peers.

AND if yt happen that anny peare of this realme shall fortune to bee endicted of and for anny offence that ys revived or made preminire or treason by this Acte, that then he so being indicted shall have his triall by his peers, in suche like manner and fourme as in other cases of treason hath been used.

XIX.  
No act of  
this Parli-  
ament shall  
be deemed  
heresy, &c.

(1) PROVIDED alwaies and be it enacted as is aforesaid, that no maner of order acte or determinacōn for anny matter of religion or cause ecclesiasticall had or made by thauctorite of this pnt Pliam<sup>t</sup>, shalbe accepted demed interpretate or adjudged at any time hereafter to be any erro<sup>r</sup> heresie scisme or scismaticall opinion; any order decree sentence consticuōn or lawe, whatsoever the same bee, to the contrary notwithstanding.

XX.  
Ecclesiasti-  
cal Commis-  
sioners shall  
not adjudge  
matters to  
be Heresy,  
unless so  
declared  
according to  
Scripture,  
by the first  
four General  
Councils, &c.  
or the  
Parliament  
and Convo-  
cation.

\* \* Provided alwaies and be it enacted by thauctoritie aforesaide, That suche pson or psons to whom yo<sup>r</sup> Highnes yo<sup>r</sup> Heires or Successoures shall hereafter, by Ires Patentis under the Greate Seale of Englande, give auctoritie to have or execute any Jurisdicōn Power or Auctoritie Spuall, or to visite reforme order or correcte any Erroures Heresies Scismes Abuses or Enormities by vertue of this Acte, shall not in any wise have Auctoritie or Power to order determine or adjudge anny Matter or Cause to be Heresie, but onelye such as heretofore have been determined ordred or adjudged to be Heresie by thauctoritie of the Canonickall Scriptures, or by the first fowre generall Councelles, or any of them, or by any other generall Councell wherin the same was declared Heresie by thexpresse and playne wordes of the sayd Canonickall Scriptures, or suche as hereafter shall bee ordredd judged or determined to be Heresye by the Highe Courte of Parlyament of this Realme withe thassent of the Clergie in their Convocaōn; Any thing in this Acte contained to the contrary notwithstanding. \* \*

XXI.  
Offences  
under this  
Act shall be  
proved by  
two wit-  
nesses, con-  
fronted with  
the accused.

AND be yt further enacted by thauctorite aforesaid, that no pson or psons shalbe hereafter indicted or arraigned for anny thoffences made ordeined revived or adjudged by this Acte, oneles ther be two sufficient witnesses or more to testifie and declare the said offences whereof he shalbe indicted or arraigned; and that the sayd witnesses or so many of them as shalbe lyving and within this realme at the tyme of tharraignment of suche pson so indicted, shalbe brought forthe in pson, face to face before the partie so arraigned, and ther shall testifie and declare what they can saye against the partie so arraigned, yf he require the same.

XXII.  
Proviso for  
persons  
aiding or  
relieving  
offenders.

PROVIDED also and be it enacted by thauctoritee aforesaid, that yf anny pson or psons shall hereafter happen to gyve anny relief ayde or comforte or in any wise be ayding helping or comforting to the pson or psons of any that shall hereafter happen to bee an offendour in any matter or case of preminire or treason revived or made by this Acte, that then suche relyef ayde or comforte given, shall not bee judged or taken to bee anny offence, onelesse ther bee two sufficient witnesses at the least that can and will openly testifie and declare that the pson or psons that so gave suche relief aide or comforte hadd notice and knowledge of suche offence ccmmitted and doon by the said offendour at the tyme of suche relief ayde or comforte so to him gyven or ministred; anny thing in this Acte

contained, or any other matter or cause to the contrary in any wise notwithstanding.

\* \* And where one pretendid Sentence hath heretofore been gyven in the Consistorye in Powles, before certayne Judges Delegate by thauctoritie Legantine of the late Cardinall Poole, by reason of a forreine usurped Power and Auctoritee, ageynst Richarde Chetwoodde Esquyre and Agnes his Wief, by the Name of Agnes Woodhull, at the Sute of Charles Tyrell Gentleman, in a Cause of Matrymonye solempnized between the saide Richarde and Agnes, as by the same pretended Sentence more playnely dothe appeare; from whiche sentence the saide Richarde and Agnes have appealed to the Courte of Rome, whiche Appeale doth ther remaine and yet ys not determined: Maie it therfore please yo<sup>r</sup> Highnes that it maye be enacted by thauctorite aforesaid, That yf Sentence in the saide Appeale shall happen to be gyven at the saide Courte of Rome for and in the Behalf of the saide Richarde and Agnes for the reversing of the said pretended Sentence, before thende of threeskore Dayes nexte after thende of this Session of this pnte Pliament, That then the same shalbee judged and taken to be good and effectuell in the Lawe, and shall and maye bee used pleaded and allowed in any Courte or Place within this Realme; Any thing in this Acte or any other Acte or Statute contained to the contrarye notwythstanding: And yf no Sentence shalbee given at the Courte of Rome in the said Appeale for the reversing of the said pretended Sentence before thende of the said lx Days, that then yt shall and maye bee lawfull for the sayd Richarde and Agnes and either of them at any tyme hereafter to commence take sue and prosecute their sayd Appeale from the said pretended Sentence, and for the reversing of the said pretended Sentence, within this Realme, in suche like Mau<sup>r</sup> and Fourme as was used to bee pursued or might have been pursued within this Realme at any tyme since the xxiiij<sup>th</sup> Yere of the Reigne of the sayd late Kyng Henrye Theight, upon [anye<sup>1</sup>] Sentences gyven in the Courte or Courtes of any Archebischoppe within this Realme; And that suche Appeale as so hereafter shalbee taken or pursued by the sayd Richarde Chetwoodd and Agnes or eyther of them, and the Sentence that herein or therupon shall hereafter bee gyven, shalbee judged to bee good and effectuell in the Lawe to all Intentes and Purposes; Any Lawe Costume Usage Canon Constitucōn or any other Matter or Cause to the contrary notwithstanding. \* \*

\* \* Provided also and bee yt enacted by thauctorite aforesaide, That where ther ys the lyke Appeale nowe depending in the said Courte of Rome, between one Robert Harcourt Marchant of the Staple, and Elizabeth Harcourte, otherwise called Elizabeth Robins, of thone ptie, and Anthony Fydell Marchant Stranger on thother ptie, that the said Robert Elizabeth and Anthonye and every of them, shall and may for the prosecuting and tryeng of their said Appeale have and enjoy the lyke Remelye Benefite and Advantage, in like Manner and Fourme as the sayd Richard and Agnes or anie of them hath maye or ought to have and enjoye; This Acte or anny thing therein contained to the contrary in any wise notwithstanding. \* \*

XXIII.  
Proviso for  
an Appeal  
by Chet-  
wood and  
Wife, from a  
Sentence of  
Cardinal  
Pole, on  
their  
Marriage.

XXIV.  
Like Pro-  
viso for  
Harcourt  
and Wife.

<sup>1</sup> The following provisos are annexed to the original Act in four separate schedules.

<sup>1</sup> O omits.



## I ELIZABETH CHAPTER II.

## AN ACTE for the Uniformitie of Common Prayoure and Dyvyne Service in the Churche, and the Administration of the Sacramentes.

The Book of Common Prayer authorized by St. 5 & 6 E. VI. c. 1. repealed by St. 1 Mary, st. 2. c. 2.

The said Act 1 Mary, st. 2. c. 2. repealed, and the said Book of Common Prayer, as altered by this Act confirmed.

II. Ministers shall perform service according to the said book;

alterations made therein;

penalty upon ministers refusing to use such common prayer, or using any other, or preaching, &c. in derogation thereof;

WHERE at the death of our late sovereigne lorde King Edwarde the Syxte, there remayned one uniforme order of common service and prayour, and of thadministracon of sacramentes rites and ceremonies in the Church of Englande, whiche was setfurthe in one booke, entituled The Booke of Common Prayour and administracon of Sacramentes and other rites and ceremonies in the Church of Englande, authorized by Acte of Pliament holden in the fifthe and sixthe yeres of our sayd late sovereigne lorde Kynge Edwarde the Syxthe, intituled an Acte for thuniformitee of comon prayour and administracon of the sacramentes; the whiche was repealed and taken away by Acte of Pliament in the first yere of the raigne of our late sovereigne ladye Quene Marie, to the greate decaye of the due honour of God and discomforte to the professours of the truthe of Christes religion: BE IT therefore enacted by thauctoritee of this pnt Pliamt, that the said estatute of repeale and everye thiuge therin conteyned, onely concerning the sayd booke and the service administration of sacramentes rites and ceremonies conteyned or appointed in or by the said booke, shalbee voide and of none effecte from and after the feast of the Nativitee of St John Baptist next coming; and that the sayd booke withe thorder of service and of the administracon of sacramentes rytes and ceremonies withe thalteracon and addicon therin added and appointed by this estatute, shall stande and bee from and after the sayd feaste of the Natyvitee of Sainte John Baptiste in full force and effecte according to the tenoure and effecte of this estatute; annye thing in the aforesaid statute of repeale to the contrary notwithstanding.

AND further be it enacted by the Quenes Highnes withe thassent of [the lordes<sup>1</sup>] and comons in this pnt Pliamt assembled, and by auctoritee of the same, that all and singler mynsters in any cathedrall or pishe church or other place within this realme of Englande Wales and the marches of the same, or other the Quenes dominions, shall from and after the feast of the Nativite of St John Baptyst next coming, bee bownden to saye and use the mattens evensong celebracon of the Lordes Supper and administracon of eche of the sacramentes and all their comon and open prayour, in suche order and fourme as is mentioned in the said booke so authorised by Pliamt in the said fifthe and sixthe yere of the reigne of King Edwarde the Sixthe, withe one alteracon or addition of certayne lessons to bee used on every Sundaye in the yere, and the fourme of the letanie altered and corrected, and twoo sentences onely added in the delyverye of the sacrament to the comunicantes, and none other or otherwise: And that yf any maner of psone vycar or other whatsoever minister that ought or should sing or saye comon prayour mentioned in the sayd booke, or minister the sacramentes, from and after the feaste of the Nativitee of St John Baptist nexte coming, refuse to use the said comon prayers or to minstre the sacramet in suche cathedrall or parishe church or other places as he should use to minister the same, in suche order and fourme as they be mentioned and set furthe in the sayd booke, or

shall wilfullye or obstinately (standing in the same) use any other ryte ceremonye order fourme or manner of celebrating of the Lordes Supper openly or prively, or mattens evensong administracon of the sacramentes or other open prayers then ys mentioned and set furthe in the sayd booke, (open prayer in and throughout this Acte is ment that prayer whiche ys for other to come unto, or heare either in comon churches or [pryve<sup>1</sup>] chappelles or oratories, comonlye called the Service of the Church,) or shall preache declare or speake any thing in the derogacon or depraving of the sayd booke or any thing therin conteyned or of any parte therof, and shalbee therof lawfully convicted according to the lawes of this realme, by verdict of twelve men, or by his owne confession, or by the notorious evidence of the facte, shall lose and forfeite to the Quenes Highnes her heires and successours for his first offence, the profite of all his spual benefices or promocons coming or arising in one hole yere next after [his<sup>2</sup>] conviccon; and also that the pson so convicted shall for the same offence suffer imprisonment by the space of sixe monethes without bayle or mayneprise: And yf any such psone once convicte of any offence concerning the premisses shall after the first conviccon eftsoones offende and bee therof in fourme aforesaid lawfully convicte, that then the same pson shall for his seconde offence suffer imprisonment by the space of one hole yere, and also shall therefore be deprived ipso facto of all his spual promocons; and that it shalbe lawfull to all patrones or donors of all and singler the same spirituall promocons or of any of them, to present or collate to the same, as though the pson and psons so offending were deade: And that yf anye suche persone or persones after he shall bee twice convicted in fourme aforesaid shall offende against anye of the premisses the thirdde tyme, and shalbee therof in fourme aforesaid lawfully convicted, that then the pson so offending and convicted the thirdde tyme shall be deprived ipso facto of all his spirituall promotyons, and also shall suffer imprysonement during his lyef: And yf the pson that shall offende and bee [convicted<sup>3</sup>] in fourme aforesaid, concerning anye of the premisses, shall not bee beneficed nor have any spual promotion, that then the same persone so offending and convicte, shall for the first offence suffer imprisonment during one hole yere nexte after his said conviction without baile or maineprise; and if anye psone not having any spual promotyon, after his first conviction, shall eftsoones offende in any thing concerning the premisses, and shalbe in fourme aforesaid therof lawfully convicted, that then the same pson shall for his seconde offence suffer imprisonment during his lyef.

AND it is ordeyned and enacted by thauctoritee abovesayd, that yf any psone or persones whatsoever after the said feaste of the Nativitee of St John Baptyst next comig, shall in anye entreludes playes songes rymes or by other open woordes, declare or speake any thing in the derogation depraving or despising of the same booke, or of any thing therin conteyned, or any parte therof, or shall

first offence, forfeiture of one year's profit of benefices, and six months' imprisonment

second offence, one year's imprisonment and deprivation;

third offence, deprivation and imprisonment for life

If not beneficed, first offence, imprisonment for one year; second offence, for life.

III. Penalty on persons depraving, &c. the common prayer by songs, speech, &c. or causing any other form to be used in churches, or interrupting any minister;

<sup>1</sup> So also in original Act. The lords spiritual did not agree. See D'Ewes's Parliamentary Journal, and § IV. of this Act.



by open facte deede or by open threatenings compell or cause or otherwise procure or mayntayne any psone vicare or other minister in any cathedrall or parrishe church or in chapell or in any other place, to sing or say any cōmon or open prayer, or to minister any sacrament, otherwise or in any other maner and fourme then ys mentioned in the said book, or that by any of the said meanes shall unlawfully interrupte or let any parson vicare or other minister in any cathedrall or parishe church or chapell or any other place to sing or saye common and open praiour, or to minister the sacramentes or any of them, in suche maner and fourme as ys mentioned in the sayd booke, that then every suche psone being therof lawfully convicted in fourme abovesaid, shall forfeit to the Quene our sovereigne ladye her heires and successours, for the first offence a hundrethe markes ; and yf any pson or psones being once convicte of any suche offence, eftsones offende against any of the last resited offences, and shall in fourme aforesaid be therof lawfullye convicte, that then the same pson so offending and convicte shall for the seconde offence forfeite to the Quene our sovereigne ladye her heires and successours fowre hundrethe markes : And yf any persone after he in fourme aforesayd shall have been twyse convicte of anny offence concerning any of the last recited offences, shall offende the thirdd tyme and bee therof in fourme abovesayd lawfully convicte, that then every person so offending and convicte shall for his thirdd offence forfeyte to our sovereigne ladye the Quene all his gooddes and cattelles, and shall suffer imprisonment during his lyf ; and yf any pson or psons that for his first offence concerning the premisses shall bee convicte in fourme aforesaid, doo not paye the sōme to bee payde by vertue of his conviction, in suche maner and fourme as the same ought to bee payde, within sixe weekes next after his conviction, that then every parson so convicte and so not paieng the same, shall for the same first offence in stede of the sayd sōme suffer imprisonment by the space of sixe monethes without bayle or maineprise ; and yf any psone or psons that for his seconde offence concerning the premisses, shalbee convicte in fourme aforesaid, doo not paye the said sōme to bee payde by vertue of his conviction and this estatute in suche maner and fourme as the same ought to bee payde withe sixe weekes next after his sayd seconde conviction, that then every pson so convicted and not so payeng the same, shall for the same seconde offence in the stede of the sayd sōme suffer imprisonment during twelve monethes without baile or maineprise : \* \*

And that from and after the sayd Feast of the Natyvitie of St John Baptist nexte cōming, all and every pson and psons inhabiting within this Realme or any other the Quenes Maties Dominions, shall diligentllye and faithefully, having no lawful or reasonable Excuse to be absent, endeavour themselves to resort to theyr Pische Church or Chappell accustomed, or upon reasonable let therof to some usuall place wher Cōmon Prayer and suche Service of God shalbee used in suche tyme of lett, upon every Sondaye and other dayes ordained and used to bee kept as Holy days, and then and ther tabyde orderlye and soberly during the tyme of the Cōmon Prayer Preachings or other Service of God ther to be used and ministred ; upon payne of punishment by the Censures of the Church, and also upon payne that every pson so offending shall forfeite for every suche offence twelve pens, to be levied by the Churchwardens of the Pische where suche offence shalbee

doon, to thuse of the Poore of the same Parishe, of the Goodes Landes and Tenementes of suche Offendour by waye of Distresse. \* \*

AND for due execucon hereof the Quenes most excellent Matie the lordes temporall and all the cōmons in this pnt Pliamt assembled, doothe in Goddes name earnestly requyre and chardge all the archbishops bishopes and other ordinaries, that they shall endeavour themselves to the uttermost of their knowledges that the due and true execucon hereof may be hadde througheout their diocesse and charges, as they will aunswer before God for suche evilles and plages wherewith the Almighty God maye justlye punishe his people for neglecting this good <sup>(1)</sup> wholesome lawe ; and for their auctoritee in this behalfe, bee yt further enacted by thauctoritee aforesayd, that all and singler the same archebishops bishopes and all other their officers exercysing ecclesiasticall jurisdiction, as well in place exempt as not exempte within their diocesse, shall have full powre and auctoritee by this Acte to reforme correcte and punishe by censures of the Church, all and singler psons whiche shall offende within any their jurisdictions or [diocesse <sup>2</sup>] after the said feast of the Nativitee of St John Baptist nexte comming, against this Acte and statute ; anye other lawe statute privilege lybertie or provision heretofore made had or suffred to the contrary notwithstanding.

AND it is ordeined and enacted by thauctoritee aforesaid, that all and every justices of oyer and determiner or justices of assise shall have full power and auctoritee in every of their open and generall sessions, tenquire here and determine al and al maner of offences that shalbe cōmited or doone contrarie to any article contained in this pnte Acte within the limites of the cōmission to them directed, and to make processe for the execucon of the same, as they maye doo againste any person being indited before them of trespas or lawfully convicted therof.

PROVIDED alwaies and be yt enacted by thauctoritee aforesaid, that all and every archebishops and bishope shall or maie at al time and times at his lybertie and pleasure, joyne and associate himself by vertue of this Acte to the said justices of oier and determiner, or to the said justices of assise at every the said open and generall sessions to be holden in any place within his diocesse for and <sup>(3)</sup> thinquirie hearing and determining of the offences aforesaid.

\* \* Provided also and be it enacted by thauctoritee aforesaid, That the Bookes concerning the sayd Services shall at the Costes and Chardges of the Pishoners of every Pische and Cathedrall Church, bee attained and gotten before the said Feast of the Nativitee of St John Baptist next folowing ; and that at suche [Pische <sup>4</sup>] and Cathedrall Churches or other Places where the said Bookes shall be attayned and gotten before the said Feast of the Nativitee of St John Baptist, shall within Three Weekes next after the sayd Bookes so attained and gotten, use the said Service and put the same in ure according to this Acte. \* \*

AND be it further enacted by thauctoritee aforesaid, that no pson or psons shalbe at any tyme hereafter empeached or otherwise molested of or for any the offences above mentioned hereafter to bee committed or doone contrarye to this Acte, onles he or they so offending be therof indited at the next generall sessions to be holden before any suche justices of oyer and

IV.  
The archbishops, &c. required to enforce this Act, and empowered so to do by spiritual censures.

V.  
Justices of assize, &c. may determine offences.

VI.  
Bishops may associate with such justices.

VII.  
Parishioners shall provide Prayer Books in Churches, &c.

VIII.  
Limitation of prosecution.

<sup>1</sup> and O.    <sup>2</sup> diocesses O.    <sup>3</sup> to O.    <sup>4</sup> Pishes O.

first offence,  
100 marks;

second  
offence 400  
marks;

third  
offence, for-  
feiture of  
goods and  
imprison-  
ment for  
life;

on non-pay-  
ment of  
fines on  
first and  
second  
offences,  
imprison-  
ment for six and  
twelve  
months.

All Persons  
shall duly  
resort to  
Church, on  
Pain of  
Spiritual  
censure, and  
1s. to the  
Poor.



determiner or justices of assise next after any offence committed or doone contrary to the tenour of this Acte.

IX.  
Peers shall  
be tried by  
peers.

PROVIDED alwaies and be it ordeined and enacted by the thauctorite aforesaid, that al and singler lordes of the Pliament for the thirdd offence above mentioned shalbee tryedd by their peers.

X.  
Chief offi-  
cers of cor-  
porations  
may deter-  
mine  
offences.

PROVIDED also and bee it ordeined and enacted by thauctoritee aforesaid, that the maior of London and al other maiors bailiefes and other heade officers of al and singler cities boroughes and townes corporate within this realme Wales and the marches of the same, to the whiche justices of assise doo not comonly repaire, shall have full power and aucthorite by vertue of this Acte tenquire here and determine the offences above-said and every of them, yerely within fiftene days after the feast of Easter and St Mighell the Archangell, in lyke maner and fourme as justices of assise and oyer and determiner maye doo.

XI.  
Saving for  
ecclesiastical  
jurisdiction  
of ordinaries,  
&c.

PROVIDED alwaies and be yt ordeyned and enacted by thauctorite aforesaid, that al and singler archebishops and bishoppes and every their chancelloures commissaries archdeacons and other ordinaries having any peculiar ecclesiasticall jurisdiction, shal have full power and auctoritee by vertue of this Acte, aswell tenquire in their visitacon synodes and elswer within their jurisdiction, at any other tyme and place, to take occasions and informacons of all and every the thinges above mentioned doone committed or perpetrated within the limites of their jurisdiction and auctoritie, and to punish the same by admonition excommunication sequestration or deprivation and other censures and processe in lyke fourme as heretofore hath bene used in lyke cases by the Quenes ecclesiasticall lawes.

XII.  
Offenders  
shall not be

PROVIDED alwaies and bee it enacted, that whatsoever pson offending in the premisses, shall for thoffence

first receive punishment of thordinarie, having a testimoniall therof under the said ordinaries seale, shall not for the same offence eftsoones be convicted before the justices; and lykewise receyving for the said [offence firste<sup>1</sup>] punishment by the justices, he shall not for the same offence eftsoones receive punishment of the ordinarie; any thing conteyned in this Acte to the contrary notwithstanding.

subject to  
double  
punish-  
ment.

PROVIDED alwaies and bee it enacted, that suche ornaments of the Church and of the ministers thereof shall bee reteyned and bee in use as was in the Church of Englande by auctorite of Pliamt in the seconde yere of the reigne of King Edward the Syxthe, untill other order shalbe therein taken by thauctorite of the Quenes Matie, withe the advise of her comissioners appointed and aucthorised under the greates seale of Englande for [ecclesiasticall causes,<sup>2</sup>] or of the metropolitan of this realme; and also that yf ther shall happen any contempte or irreverence to be used in the ceremonies or rites of the Church by the misusing of thorders appointed in this booke, the Quenes Matie maye by the like advice of the said comissioners or metropolitan ordeyne and publishe suche further ceremonies or rites as maye bee most for thadvancement of Goddes glorye, the edifieng of his Church and the due reverence of Christes holye misteries and sacramentes.

XIII.  
Ornaments  
of the  
Church and  
rites and  
ceremonies  
may be  
regulated  
by the  
Queen and  
her eccle-  
siastical  
commis-  
sioners.

AND be yt further enacted by thauctoritee aforesaid, that all lawes statutes and ordinances, wherein or whereby any other service administration of sacramentes or common prayer ys lymytted established or sett foorth to be used within this realme or any other the Quenes dominions or countreis, shall from hens-foorth be utterly voyde and of none effecte.

XIV.  
All former  
laws as to  
[other]  
divine ser-  
vice re-  
pealed.

### 5 ELIZABETH. CHAPTER XXIII.

AN ACTE for the due Execucon of the Writ De excommunicato capiendo.

For re-  
medying  
the evils  
resulting  
from not  
duly execut-  
ing writs  
de excom-  
municato  
capiendo;

FORASMUCHE as dyvers psons offending in many greaste crimes and offences, apperteyning merely to the jurisdiction and determinacon of theecclesiasticall courtes and judges of this realme, ar many tymes unpunished for lack and want of the good and due execucon of the writte de excommunicato capiendo, directed to the sheriffe of any countie, for the taking and apprehending of suche offendours; the greaste abuse wherof as yt should seme hathe growen, for that the sayd writte ys not returneable into anye courte that might have the judgement of the well executing and serving of the said writt, according to the contentes thereof, but hitherto have been lefte onely to the discretion of the sherifes and their deputies, by whose negligences and defaultes for the most parte, the said writt ys not executed upon thoffendor as yt ought to bee; by reason wherof suche offendoures bee greatly encouraged to contynue theyre synnefull and crymynous lyef, muche to the displeasure of Almyghty God, and to the greaste contempte of the ecclesiasticall lawes of this realme: Wherefore for the redresse thereof, bee it enacted by the Quenes most excellent Matie wth thassent of the lordes spual and temporall and the comons in this pnte Pliament assembled and by thauctoritie of the same, that from and after the firste daye of Maye next comyng, every writt of excommunicato capiendo that shalbe graunted and awarded out of the Highe Courte of Chancerye agaynst any pson or psons within

the realme of Englande, shalbee made in the tyme of the terme, and returneable before the Quenes Highnes her heires and successoures, in the courte comonly called the Kinge Benche, in the terme nexte after the teste of the same writt, and that the same writt shalbee made to conteyne at the least twentye days between the teste and the returne thereof; and after the same writte shalbee so made and sealed, that then the said writt shalbee forthew<sup>th</sup> brought into the said Courte of the Kinges Benche, and there in the presence of the justices shalbee opened and delyvered of recorde to the sheriff or other officer to whom the serving and executyon thereof shall apperteyne, or to his or their deputie or deputies; and yf afterwarde it shall or maye appeare to the justices of the same courte for the tyme beyng, that the same writt so delyvered of recorde bee not duly returned before them at the daye of the returne thereof, or that anye other defaulte or negligence hath been used or hadd in the not well serving and executing of the sayd writ, that then the justices of the said courte shall and maye by auctoritee of this Acte, assesse suche amerciament, upon the said sheriff or other officer in whom suche defaulte shall appeare, as to the discretyon of the sayd justices shalbee thought meete and convenient, wch amerciament so assessed shalbee extreated into the Courte of

shall be  
made in  
term-tide,  
returnable  
in the  
ensuing  
term into  
the King's  
Benche, and  
shall be  
there  
openly de-  
livered, of  
record, to  
the sheriff;  
who shall be  
amerced in  
case the  
writ is not  
duly re-  
turned.

all such  
writs,  
awarded  
out of  
Chancery,

<sup>1</sup> first offence O.

<sup>2</sup> causes ecclesiasticall O.



Thexchequer as other amerciamentes have been used.

II.  
At return-day of writ, sheriff not compellable to bring in the body; but on return of *non est inventus*, capias shall issue, returnable in term-time two months after the teste, with proclamations against the party, to surrender under forfeiture of £10; and on his default such forfeiture shall be estreated, and a fresh capias with like proclamation, to surrender on forfeiture of £20, and so continually until the party shall surrender.

AND bee it further enacted by thauctoritee aforesayd, that the sheriffe or other officer to whom suche writt of excommunicato capiendo, or other proces by vertue of this Acte, shalbee directed, shall not in any wise bee compelled to bring the bodye of suche pson or psons as shalbee named in the sayd writ or proces, into the said Courte of the Kinge Benche, at the daye of the returne therof; but shall onely returne the same writt and proces thither, w<sup>th</sup> declaracōn brefly howe and in what maner he hathe served and executed the same, to thintent that therupon the said justices may then further therein procede according to the tenor and effecte of this p<sup>nt</sup>e Acte; and yf the said sheryff or other officer to whom thexecu<sup>ō</sup>n the sayd writ shall so appertayne, doo or shall returne that the p<sup>tie</sup> or p<sup>ties</sup> named in the said writt cannot bee founde w<sup>th</sup>in his baleefweek, that then the said justices of the Kinge Benche for the tyme beyng, upon every suche returne shall awarde one writ of capias against the said pson or psons named in the said writ of excōmunicato capiendo, returneable in the same courte, in the terme tyme, twoo monethes at the least next after the teste therof; w<sup>th</sup> a proclama<sup>ō</sup>n to be conteyned w<sup>th</sup>in the said writ of capias, that the sheriff or other officer to whom the said writ shalbee directed, in the full countie courte or elles at the generall assises and gaole delyverie to bee holden w<sup>th</sup>in the same countie, or at a quarter sessions to bee holden before the justices of peace w<sup>th</sup>in the same countie, shall make open proclama<sup>ō</sup>n tenne daies at the least before the returne that the p<sup>tie</sup> or p<sup>ties</sup> named in the said writ, shall w<sup>th</sup>in sixe days next after suche proclama<sup>ō</sup>n, yelde his or theyr body or bodyes to the gaole and pryson of the said sheriff or other suche officer, there to remayne as a prysoner according to the tenor and effecte of the first writ of excōmunicato capiendo, upon payne of forfeiture of tenne poundes; and therupon after suche proclama<sup>ō</sup>n had and the said sixe daies paste and expired, then the said sheriff, or other officer to whom suche writ of capias shalbee directed, shall make returne of the same writ of capias into the said Courte of the Kinge Benche, of all that hee hathe doone in thexecu<sup>ō</sup>n therof, and whether the p<sup>tie</sup> named in the sayd writ have yelded his bodie to prison or not: And yf upon the returne of the said sheryff yt shall appeare that the p<sup>tie</sup> or p<sup>ties</sup> named in the said writ of capias, or any of them, have not yelded theyr bodies to the gaole and pryson of the said sherif or other officer, according to theeffecte of the same proclama<sup>ō</sup>n, that then every suche pson that so shall make defaulte, shall for every suche defaulte forfait to the Quenes Highnes her heyres and successours tenne poundes, whiche shall lykewise bee extreated by the sayd justices into the said Courte of Exchequer in suche maner and fourme as fines and amerciamentes there taxed and assessed arre used to bee: And therupon the sayd justices of the Kinges Benche shall also awarde forth the one other writ of capias against the pson or psons that so shalbee returned to have made defaulte, w<sup>th</sup> suche like proclama<sup>ō</sup>n as was conteyned in the first capias, and a payne of twenty poundes to bee mentioned in the sayd seconde writte and proclama<sup>ō</sup>n; and the sheriff or other officer to whom the said [writt of seconde capias<sup>1</sup>] shalbee so directed, shall serve and execute the same seconde writ in suche like maner and fourme as before ys expressed for the

serving and executing of the sayd first writte of capias; and yf the sheryff or other officer shall returne upon the said seconde capias that he hathe made the proclama<sup>ō</sup>n according to the tenor and effecte of the same writt, and that the p<sup>tie</sup> hathe not yelded his body to pryson according to the tenor of the said proclama<sup>ō</sup>n, that then the sayd p<sup>tie</sup> that so shall make default shall for suche his contempte and defaulte forfait to the Quenes Highnes her heyres and successours the some of twentye poundes; w<sup>ch</sup> sayd some of xx li. the said justices of the Kinges Benche for the tyme being shall likewise cause to bee extreated into the said Courte of Exchequer, in maner and forme aforesaid: And then the said justices shall likewise awarde foorth the one other writt of capias agaynst the sayd p<sup>tie</sup>, w<sup>th</sup> suche lyke proclama<sup>ō</sup>n and payne of forfeiture as was conteyned in the said seconde writ of capias; and the sheriff or other officer to whom the said thirde writ of capias shall so bee directed, shall serve and execute the said third writt of capias in suche like maner and forme as before in this Acte ys expressed and declared for the serving and executing of the said first and seconde writtes of capias: And yf the sheriff or other officer to whom thexecu<sup>ō</sup>n of the said third writt shall appertayne do make returne of the sayd thirdd writ of capias that the p<sup>tie</sup> upon suche proclama<sup>ō</sup>n hathe not yelded his bodye to pryson according to the tenor therof, that then everie such p<sup>tie</sup> for everie suche contempt and defaulte shall likewise forfait to the Quenes Matie her heires and successours other twenty powndes; w<sup>ch</sup> some of xx li. shall likewise bee extreated in the said Courte of Thexchequer in maner and fourme aforesaid; and therupon the said justices of the Kinges Benche shall likewise awarde foorth the one writ of capias against the said p<sup>tie</sup>, w<sup>th</sup> like proclama<sup>ō</sup>n and like payne of forfeiture of xx li. And [that also<sup>1</sup>] the said justices shall have authoritee by this Acte infinitely tawarde suche proces of capias, w<sup>th</sup> suche like proclama<sup>ō</sup>n and payne of forfeiture of xx li. as ys before limited against the said p<sup>tie</sup> that so shall make defaulte in yelding of his body to the pryson of the sheriff, until suche tyme as, by returne of some of the said writtes before the said justices, yt shall and maye appeare that the said p<sup>tie</sup> hathe yelded hymself to the custodye of the sayd sherif or other officer according to the tenor of the said proclama<sup>ō</sup>n: And that the p<sup>tie</sup> upon every default and contempt by him made agaynst the proclama<sup>ō</sup>n of any of the said writtes so infinitely to bee awarded agaynst hym, shall incurre like payne & forfeiture of xx li. w<sup>ch</sup> shall likewise be extreated in maner and fourme aforesaid.

AND bee it further enacted by thauctoritee aforesayd, that when any pson or psons shall yelde his or their bodye or bodyes to the handes of the sheriff or other officer upon any of the sayd writtes of capias, that then the same p<sup>tie</sup> or p<sup>ties</sup> that shall so yelde themselves shall remayne in the pryson and custodye of the sayd sheriff or other officer, w<sup>th</sup>out bayle baston or maynepryse, in suche like maner and fourme to all intentes and purposes as he or they shoulde or ought to have doone yf he or they hadd been apprehended and taken upon the sayd writt of excōmunicato capiendo.

AND bee it further enacted by thauctoritee aforesaid, that yf any sheryff, or other officer by whom the sayd writte of capias or any of them shalbee returned as ys aforesaid, doo make an untrewre returne upon

III.  
Party surrendering shall be kept in custody, as under writ de excom. cap.

IV.  
Penalty on sheriff for false return of default. £40. to the party.

<sup>1</sup> seconde writt of capias O.

<sup>1</sup> so further O.



any of the sayd writtes, that the p<sup>te</sup> named in the said writt hathe not yelded his bodye upon the said proclama<sup>ti</sup>ons or any of them, where indede the p<sup>te</sup> dyd yelde himself according to theeffect of the same, that then every suche sheryf or other officer for every suche false and untrewre returne shall forfait to the p<sup>te</sup> greved and dampnified by the said returne, the some of fourty poundes; for the w<sup>ch</sup> some of xl li. the sayd p<sup>te</sup> greved shall have his recoverye and due remedye by actyon of debt bill playnte or informa<sup>ti</sup>on in any of the Quenes courtes of recorde, in w<sup>ch</sup> action bill playnte or informa<sup>ti</sup>on no essoigne protec<sup>ti</sup>on or wager of lawe shalbee admitted or allowed for the p<sup>te</sup> defendante.

V.  
Saving for authority of the bishop, &c. to receive submission of the party excommunicated, &c.

SAVING and reserving to all archebishoppes and bishoppes, and all others having auctoritee to certifie any pson excommunicated, like auctoritee taccept and receyve the submission and satisfac<sup>ti</sup>on of the said pson so excommunicated in maner and fourme heretofore used, and him tabsolve and release, and the same to signifie as heretofore hathe been accustomed to the Quenes Ma<sup>tie</sup> her heires and successoures into the Highe Courte of Chancerye; and therupon to have suche writtes for the delyverance of the said pson so absolved and released from the sheriffes custodye or pryson, as heretofore they or any of them had or of right ought or might have hadd; any thing in this presente statute specyfyed or conteyned to the contrarye hereof in any wise notwithstanding.

VI.  
Process against offenders in Wales, counties palatine, &c. on tenor of significavit into Chancery being sent by mittimus to the head officers in Wales, &c.

(<sup>1</sup>) PROVIDED alwayes, that in Wales, the counties palatines of Lancaster Chester Durlam and Elye, and in the cinq portes, being jurisdic<sup>ti</sup>ons and places exempte wher the Quenes Ma<sup>ties</sup> writt dothe not r<sup>u</sup>ne, and proces of capias from thense not returnable into the sayd Courte of the Kinges Benche, after any significavit being of recorde in the sayd Courte of Chancerye, the tenor of suche significavit by mittimus shalbee sent to suche of the head officers of the said countrey of Wales, counties palatines and places exempte, w<sup>th</sup>in whose offices chardge or jurisdic<sup>ti</sup>on thoffendor shalbee resiaunt, that ys to saye, to the chancello<sup>r</sup> or chamberlayne for the said countie palatyne of Lancaster and Chester, and for the cyncq portes to the lorde warden of the same, and for Wales and Elye and the countie palatyne of Durlam, to the cheif justice or justicer ther; and thereupon every of the sayd justices and officers, to whom suche tenour of significavit w<sup>th</sup> mittimus shalbee directed and delyvered, shall by vertue of this estatute have power & auctoritee to make like proces to thinferiour officer and officers to whom thexecu<sup>ti</sup>on of proces there doothe apperteyne, returneable before the justices there at their next sessions or courtes two monethes at the least after the teste of every suche proces; so allways as in every degree theye shall proceed in their sessions and courtes against thoffend<sup>ers</sup> as the justices of the sayd Courte of Kinges

Benche are lymitted by the tenor of this Acte in terme tymes to doo and execute.

PROVIDED also and bee yt enacted, that any pson at the tyme of any proces of capias (afore mentyoned) awarded beyng in pryson, or out of this realme in the p<sup>ties</sup> beyonde the sea, or w<sup>th</sup>in age, or of non sane memorie, or woman covert, shall not incurre any of the paynes or forfeitures afore mentioned, whiche shall growe by any returne or defaulte happening duryng suche tyme of nonage imprysonement beyng beyonde the sea or non sane memorie; and that by vertue of this estatute the p<sup>te</sup> greved may pleade every suche cause or matter in barre of and upon the distres or other proces that shalbee made for levyeng of any of the sayd paynes or forfeitures: And that yf the offendor against whom any suche writt of excomunicato capiendo shalbee awarded, shall not in the same writt of excomunicato capiendo have a sufficient and lafull addition according to the fourme of the Statute of primo of Henrye the Fifthe, in cases of certayne suites wherupon proces of exigent are to bee awarded, or yf in the significavit yt bee not conteyned that thexecu<sup>ti</sup>on dothe proceade upon some cause or contempte of some originall matter of heresie, or refusing to have his or their childe baptysed, or to receive the holy comunion as yt comonlye ys nowe used to bee receyved in the Church of Englande, or to come to dyvyne service nowe comonlye used in the said Church of Englande, or error in matters of religyon or doctryne nowe receyved and allowed in the sayd Church of Englande, incontinenye usurye symonye perjurye in the ecclesiasticall courte or idolatrye, that then all and every paynes and forfeitures lyimited agaynst suche psons excomunicate by this estatute, by reason of suche writ of excomunicato capiendo wanting sufficient addi<sup>ti</sup>on, or of suche significavit wanting all the causes afore mentioned, shalbee utterly voyde in lawe, and by waye of plea to bee allowed to the p<sup>te</sup> greved: And yf the addi<sup>ti</sup>on shalbee with a nuper of the place, then in every suche case, at thawarding of the firste capias w<sup>th</sup> proclama<sup>ti</sup>on according to the fourme afore mentioned, one writt of proclama<sup>ti</sup>on (w<sup>th</sup>out anye payne expressed) shalbee awarded into the countie where the offendor shalbee most comonly resiant, at the tyme of thawarding of the said first capias withe payne in the same writt of proclama<sup>ti</sup>on, to be returneable the day of the returne of the said first capias w<sup>th</sup> payne, and proclama<sup>ti</sup>on therupon at some one suche tyme and courte as ys prescribed for the proclama<sup>ti</sup>on upon the said first capias withe payne: And yf suche p<sup>cl</sup>ama<sup>ti</sup>on bee not made in the countie where thoffendor shalbee most comonly resyant, in suche cases of addi<sup>ti</sup>ons of nup, that then suche offendor shall susteyne no payne or forfeiture by vertue of this estatute for not yelding his or her body accordyng to the tenour afore mentioned; any thing before specyfyed to the contrarye hereof in any wyse notwithstanding.

VII.  
Proviso for prisoners, infants, femes covert, and other disabled persons.

Addition of the party as required by 1 H. V. c. 5.;

causes of excommunication to be specified in the significavit;

where addition is with a nuper, a writ of proclama<sup>ti</sup>on without penalty shall issue into the county where the party dwell

### 53 GEORGE III. CHAPTER CXXVII.

AN ACT for the better Regulation of Ecclesiastical Courts in England, and for the more easy Recovery of Church Rates and Tithes. [12th July 1813.]

WHEREAS it is expedient that excommunication, together with all proceedings following thereupon, should, saving in certain cases, be discontinued, and that other proceedings should be substituted in lieu

thereof; and that certain other regulations should be made in the proceedings of the ecclesiastical courts; and that more convenient modes of recovering tithes and church rates in certain cases should be provided: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same,

<sup>1</sup> The following provisos are annexed to the original Act in one separate schedule.



Excommuni-  
cation discon-  
tinued,  
except in  
certain  
cases here-  
after spe-  
cified.

that from and after the passing of this Act excommuni-  
cation, together with all proceedings following there-  
upon, shall in all cases, save those hereafter to be  
specified, be discontinued throughout that part of the  
United Kingdom of Great Britain and Ireland called  
England; and that in all causes which according to the  
laws of this realm are cognizable in the ecclesiastical  
courts, when any person or persons having been duly  
cited to appear in any ecclesiastical court, or required  
to comply with the lawful orders or decrees, as well final  
as interlocutory, of any such court, shall neglect or re-  
fuse to appear, or neglect or refuse to pay obedience to  
such lawful orders or decrees, or when any person or  
persons shall commit a contempt in the face of such  
court, no sentence of excommunication shall be given or  
pronounced, saving in the particular cases hereafter to  
be specified, but instead thereof it shall be lawful for  
the judges or judge who issued out the citation, or  
whose lawful orders or decrees have not been obeyed, or  
before whom such contempt in the face of the court  
shall have been committed, to pronounce such person or  
persons contumacious and in contempt, and within ten  
days to signify the same, in the form to this Act  
annexed, to his Majesty in Chancery, as hath heretofore  
been done in signifying excommunications; and there-  
upon a writ de contumace capiendo in the form to this  
Act annexed shall issue from the Court of Chancery,  
directed to the same persons to whom the writs de ex-  
communicato capiendo have heretofore been directed;  
and the same shall be returnable in like manner as the  
writ de excommunicato capiendo hath been by law re-  
turnable heretofore, and shall have the same force and  
effect as the said writ; and all rules and regulations  
not hereby altered, now by law applying to the said writ  
and the proceedings following thereupon, and particu-  
larly the several provisions contained in a certain Act  
passed in the fifth year of Queen Elizabeth, intituled  
"An Act for the due execution of the writ de excom-  
municato capiendo," shall extend and be applied to the  
said writ de contumace capiendo, and the proceedings  
following thereupon, as if the same were herein par-  
ticularly repeated and enacted; and the proper officers  
of the said Court of Chancery are hereby authorized and  
required to issue such writ de contumace capiendo  
accordingly; and all sheriffs, gaolers, and other officers  
are hereby authorized and required to execute the same  
by taking and detaining the body of the person against  
whom the said writ shall be directed to be executed;  
and upon the due appearance of the party so cited and  
not having appeared as aforesaid, or the obedience of  
the party so cited and not having obeyed as aforesaid, or  
the due submission of the party so having committed a  
contempt in the face of the court, the judges or judge of  
such ecclesiastical court shall pronounce such party  
absolved from the contumacy and contempt aforesaid,  
and shall forthwith make an order upon the sheriff,  
gaoler, or other officer in whose custody he shall be, in  
the form to this Act annexed, for discharging such party  
out of custody; and such sheriff, gaoler, or other officer  
shall, on the said order being shown to him, so soon as  
such party shall have discharged the costs lawfully in-  
curred by reason of such custody and contempt, forth-  
with discharge him.

II. PROVIDED always, and be it further enacted, that  
nothing in this Act contained shall prevent any eccle-  
siastical court from pronouncing or declaring persons to  
be excommunicate in definitive sentences, or in interlo-  
cutory decrees having the force and effect of definitive  
sentences, such sentences or decrees being pronounced  
as spiritual censures for offences of ecclesiastical cogni-  
zance, in the same manner as such court might lawfully  
have pronounced or declared the same had this Act not  
been passed.

III. AND be it further enacted, that no person who  
shall be so pronounced or declared excommunicate shall  
incur any civil penalty or incapacity whatever in conse-  
quence of such excommunication, save such imprison-  
ment, not exceeding six months, as the court pronounc-  
ing or declaring such person excommunicate shall  
direct; and in such case the said excommunication and  
the term of such imprisonment shall be signified or  
certified to his Majesty in Chancery in the same manner  
as excommunications have been heretofore signified,  
and thereupon the writ de excommunicato capiendo  
shall issue, and the usual proceedings shall be had, and  
the party being taken into custody shall remain therein  
for the term so directed, or until he shall be absolved  
by such ecclesiastical court.

IV. AND whereas in the seventh and eighth years of  
King William the Third an Act was made and passed,  
intituled "An Act for the more easy recovery of small

tithes," whereby amongst other things therein enacted,  
two or more of his Majesty's justices of the peace are  
authorized and required to hear and determine com-  
plaints touching tithes, oblations, and compositions  
subtracted or withheld, not exceeding forty shillings:  
And whereas it has become expedient to enlarge such  
amount, and also to extend the said Act to all tithes  
whatsoever of certain limited amount: Be it enacted,  
that such justices of the peace shall from and after the  
passing of this Act be authorized and required to hear  
and determine all complaints touching tithes, oblations,  
and compositions subtracted or withheld, where the  
same shall not exceed ten pounds in amount from any  
one person, in all such cases, and by all such means,  
and subject to all such provisions and remedies by  
appeal or otherwise, as contained in the said Act of  
King William touching small tithes, oblations, and  
compositions not exceeding forty shillings: Provided  
always nevertheless, that from and after the passing of  
this Act one justice of the peace shall be competent to  
receive the original complaint, and to summon the  
parties to appear before two or more justices of the  
peace, as in the said Act is set forth.

V. AND be it further enacted, that from and after the  
passing of this Act no action shall be brought for the  
recovery of any penalty for the not setting out tithes,  
nor any suit instituted in any court of equity or in any  
ecclesiastical court to recover the value of any tithes,  
unless such action shall be brought or such suit com-  
menced within six years from the time when such tithes  
became due.

VI. AND whereas in the seventh and eighth years of  
King William the Third an Act was made and passed,  
intituled "An Act that the solemn affirmation and  
" declaration of the people called Quakers shall be ac-  
" cepted instead of an oath in the usual form," whereby  
among other things it is therein enacted, where any  
Quaker shall refuse to pay for or compound for his great  
or small tithes, or to pay any church rates, two or more  
of his Majesty's justices of the peace are authorized to  
hear and determine the same, not exceeding the value  
of ten pounds: And whereas by a statute made and  
passed in the first year of King George the First the  
said Act is extended to other objects: And whereas it is  
become expedient to enlarge the said sum: Be it  
enacted, that from and after the passing of this Act all  
the provisions of the said Acts of King William and  
King George shall be deemed and taken to extend to  
any value not exceeding fifty pounds: Provided always  
nevertheless, that from and after the passing of this  
Act one justice of the peace shall be competent to re-  
ceive the original complaint, and to summon the parties  
to appear before two or more justices of the peace, as in  
the said Act is set forth.

[VII.] AND whereas it is expedient that church rates  
or chapel rates of limited amount unduly refused or  
withheld should in certain cases be more easily and  
speedily recovered: Be it enacted, that from and after  
the passing of this Act, if any one duly rated to a church  
rate or chapel rate, the validity whereof has not been  
questioned in any ecclesiastical court, shall refuse or  
neglect to pay the same sum at which he is so rated, it  
shall and may be lawful for any one justice of the peace  
of the same county, riding, city, liberty, or town cor-  
porate where the church or chapel is situated in respect  
whereof such rate shall have been made, upon the  
complaint of any churchwarden or churchwardens,  
chapelwarden or chapelwardens, who ought to receive  
and collect the same, by warrant under the hand and  
seal of such justice to convene before any two or more  
such justices of the peace any person so refusing or  
neglecting to pay such rate and to examine upon oath  
(which oath the said justices are hereby empowered to  
administer) into the merits of the said complaint, and  
by order under their hands and seals to direct the pay-  
ment of what is due and payable in respect of such rate,  
so as the sum ordered and directed to be paid as afore-  
said do not exceed ten pounds over and above the  
reasonable costs and charges, to be ascertained by such  
justices; and upon refusal or neglect of such party to  
pay according to such order it shall and may be lawful  
for any one of such justices by warrant under his hand  
and seal to levy the money thereby ordered to be paid,  
together with the amount of such costs and charges, by  
distress and sale of the goods of such offender, his  
executors or administrators, rendering only the over-  
plus to him or her, the necessary charges of distraining

Justices of  
peace may  
determine  
complaints  
respecting  
tithes not  
exceeding  
ten pounds.

One justice  
may receive  
the original  
complaint,  
&c.

Limitation  
of actions  
respecting  
tithes.

Extension of  
the provi-  
sions of  
7 & 8 Will. 3.  
c. 34. and  
1 Geo. 1. st. 2.  
c. 6. as to  
Quakers  
neglecting  
to pay  
tithes, &c.

Recovery of  
church or  
chapel  
rates.

Writ de  
contumace  
capiendo  
issuable in  
certain  
cases.

5 Eliz. c. 23.

In what  
cases excom-  
munication  
shall con-  
tinue.

Proceedings  
in case of  
excommuni-  
cation.

7 & 8 Will. 3.  
c. 6.

[1 Rep., Stat. Law Rev. Act, 1873, except as to any rate the payment  
of which may still be enforced by process of law.]



Appeal.

being thereout first deducted and allowed by the said justices; and any person finding him or herself aggrieved by any judgment given by two or more such justices may appeal to the next general quarter sessions to be held for the county, riding, city, liberty, or town corporate wherein the church or chapel is situated in respect whereof such rate shall have been made; and the justices of the peace there present or the major part of them shall proceed finally to hear and determine the matter and to reverse the said judgment if they shall see cause; and if the justices then present or the major part of them shall find cause to affirm the judgment given by the first two or more justices, the same shall be decreed by order of sessions, with costs against the appellant, to be levied by distress and sale of the goods and chattels of the said party appellant: Provided always, that in case any such appeal be made as aforesaid no warrant of distress shall be granted until after such appeal be determined: Provided also, that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the validity of any church rate or chapel rate, or from proceeding to enforce the payment of any such rate, if the same shall exceed the sum of ten pounds, from the party proceeded against: Provided likewise, that if the validity of such rate, or the liability of the person from whom it is demanded to pay the same, be disputed, and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon, and the person or persons demanding the same may then proceed to the recovery of their demand, according to due course of law, as heretofore used and accustomed: Provided likewise, that nothing herein contained shall affect any regulations that may have been made by authority of Parliament respecting the church rates or chapel rates of any particular parishes or districts.

Saving of the ecclesiastical jurisdiction.

Proctors acting for or allowing their names to be used by persons not entitled to act as proctors to be struck off the roll.

VIII. AND be it further enacted, that from and after the passing of this Act, if any proctor of the Arches Court of Canterbury, or any other ecclesiastical court or courts in which he shall be entitled to act as proctor, shall act as such, or permit or suffer his name to be in any manner used in any suit the prosecution or defence whereof shall appertain to the office of a proctor, or in obtaining probates of wills, letters of administration, or marriage licences to or for or on account or for the profit and benefit of any person or persons not entitled to act as a proctor, or shall permit or suffer any such person or persons to demand or participate in such profit and benefit, and complaint thereof shall be made to the court or courts wherein such proctor hath been admitted and enrolled, and proof given to the satisfaction of the said court or courts that such proctor hath offended therein as aforesaid, then and in such case every such proctor so offending shall be struck off the roll of proctors, and be for ever after disabled from practising as a proctor, or be suspended from the office, function, and practice of a proctor in all and every the said court or courts for so long a period as the judge or judges of the said court or courts may deem fit, save and except as to any allowance or allowances, sum or sums of money, that are or shall be agreed to be made to the widows or children of any deceased proctor or proctors by any surviving partner or partners of such deceased proctor or proctors, \* \* and also save and except as to any Agreement made or understood to have been made between Proctors and Articled Clerks whose Articles have been executed prior to the passing of this Act. \* \*

Penalty on persons exercising the functions of a proctor not being duly enrolled as such.

IX. AND be it further enacted, that from and after the passing of this Act, in case any person or persons shall in his or in their own name, or in the name of any other person or persons, make, do, act, exercise, or perform any act, matter, or thing whatsoever in any way appertaining or belonging to the office, function, or practice of a proctor, for or in consideration of any gain, fee, or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person for every such offence shall forfeit and pay the sum of fifty pounds, to be sued for and recovered in manner herein-after mentioned.

Not to extend to the Salaries of Clerks of Seven Years' standing.

\* \* X. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend to any Salary which shall be agreed to be paid by a Proctor, his Partner or Successor, to a Clerk really and *bonâ fide* serving in his Office at the Time of the passing of this Act, and who shall have been

*bonâ fide* serving in the Office of any Proctor or Proctors for Seven Years next before the passing of the same. \* \*

XI. AND be it further enacted, that all pecuniary forfeitures and penalties imposed on any person or persons for offences committed against this Act shall and may be sued for and recovered in any of his Majesty's courts of record at Westminster by action of debt, bill, plaint, or information, wherein no essoign, protection, privilege, wager of law, or more than one imparlance, shall be allowed, and wherein the plaintiff, if he or she shall recover any penalty or penalties, shall receive the same for his or her own use, with full costs of suit.

Recovery of penalties.

XII. AND be it further enacted, that if any action or suit shall be brought or commenced for anything done in pursuance of this Act, every such action or suit shall be commenced within three calendar months next after the fact committed, and not afterwards and shall be laid and tried in the city or county wherein the cause of action shall have arisen, and not elsewhere; and, the defendant or defendants in such action or suit shall and may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this Act; and if the same shall appear to have been so done, or if any action or suit shall be brought after the time limited for bringing the same, or shall be laid in any other city, county, or place than as aforesaid, then the judge shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or suffer a discontinuance of their action or suit after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in any other case by law. [Rep., 5 & 6 Vict. c. 97. s. 2.]

Limitatio of actions respect of offences against this Act, &c.

## SCHEDULES to which this Act refers.

### SCHEDULE (A.)

To his most excellent Majesty and our Sovereign Lord George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, by divine providence, &c. health in Him by whom kings and princes rule and govern: We hereby notify and signify unto your Majesty, that one

Significavit of party being contumacious and in contempt.

of in the county of hath been duly pronounced guilty of manifest contumacy and contempt of the law and jurisdiction ecclesiastical in not [as the case may be] appearing before [here set out the style of the ecclesiastical judge or his representative] or in not obeying the lawful commands [here set out the commands] of [such judge or representatives], or in having committed a contempt in the face of the court of [such judge or representative] lawfully authorized by [here set out the nature and manner of such contempt], on a day and hour now long past, in a certain cause of [here set out the nature of the cause, and the names of the parties to the same]. We therefore humbly implore and entreat your said most excellent Majesty would vouchsafe to command the body of the said to be taken and imprisoned for such contumacy and contempt. Given under the seal of our court the day of

A.B. registrar or deputy registrar [as the case may be].

### SCHEDULE (B.)

GEORGE, &c. to the sheriff of greeting: The hath signified to us, that of in your county of is manifestly contumacious and contemns the jurisdiction and authority of [here fully state the nonappearance, disobedience, together with the commands disobeyed, or the contempt in the face of the court, as the case may be], nor will he submit to the ecclesiastical jurisdiction; but forasmuch as the royal power ought not to be wanting to enforce such jurisdiction, we command you that you attach the said by his body,

Writ de contumace capiendo.



until he shall have made satisfaction for the said contempt; and how you shall execute this our precept notify unto \_\_\_\_\_ and in nowise omit this, and have you there this writ. Witness Ourselves at Westminster the \_\_\_\_\_ day of \_\_\_\_\_ year of our reign.

## SCHEDULE (C.)

Writ of deliverance.

WHEREAS  
county of \_\_\_\_\_  
nouncing of  
writ issued thereupon, you attached by his body until

of \_\_\_\_\_ in your  
whom lately, at the de-  
for contumacy, and by

he should have made satisfaction for the contempt: Now he having submitted himself and satisfied the said contempt, we hereby empower and command you, that without delay you cause the said \_\_\_\_\_ to be delivered out of the prison in which he is so detained, if upon that occasion and no other he shall be detained therein. Given under the seal of our \_\_\_\_\_ of \_\_\_\_\_

A.B. registrar [or deputy registrar, as the case may be].

Extracted by E.F.  
proctor.

## 2 &amp; 3 WILLIAM IV. CHAPTER XCII.

AN ACT for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council. [7th August 1832.]

25 Hen. 8.  
c. 19. s. 4.

WHEREAS by an Act passed in the twenty-fifth year of the reign of King Henry the Eighth, and intituled "The submission of the clergy and restraint of appeals," it is (amongst other things) provided, that for lack of justice at or in any of the courts of the archbishops of this realm, or in any of the King's dominions, it should be lawful to the parties grieved to appeal to the King's Majesty in the King's Court of Chancery; and that upon every such appeal a commission should be directed under the great seal to such persons as should be named by the King's Highness, his heirs or successors, like as in case of appeal from the Admirals Court to hear and definitively determine such appeals, and the causes concerning the same; which commissioners so by the King's Highness, his heirs or successors, to be named or appointed, should have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence as the said commissioners should make and decree in and upon any such appeal should be good and effectual, and also definitive, and that no further appeals should be had or made from the said commissioners for the same; and that all manner of provocations and appeals thereafter to be had, made, or taken, from the jurisdiction of any abbots, priors, or other heads and governors of monasteries, abbeys, priories, and other houses and places exempt, in such cases as they were wont or might afore the making of the Act now in recital, by reason of grants or liberties of such places exempt, to have or make immediately any appeal or provocation to the Bishop of Rome otherwise called Pope, or to the see of Rome, in all those cases every person and persons having cause of appeal or provocation should and might take and make their appeals and provocations immediately to the King's Majesty of this realm, into the Court of Chancery, in the manner and form as they used afore to do to the see of Rome; which appeals and provocations so made should be definitively determined by authority of the King's commission in such manner and form as was in the said Act now in recital above mentioned, so that no archbishop or bishop of this realm should intermit or meddle with any such appeals otherwise or in any other manner than they might have done afore the making of the Act now in recital; any thing in the Act now in recital to the contrary thereof notwithstanding: And whereas by an Act passed in the eighth year of the reign of Queen Elizabeth, and intituled "For the avoiding of tedious suits in civil and marine causes," it is provided that every such judgment and sentence definitive as should be given and pronounced in any civil and marine cause, upon appeal lawfully to be made therein to the Queen's Majesty in her Highness' Court of Chancery, by such commissioners or delegates as should be nominated and appointed by her Majesty, her heirs or successors, by commissioner under the half seal, as it had been theretofore used in such cases, should be final, and that no further appeal should be made from the said judgment or sentence definitive, or from the said commissioners or delegates, for or in the same; any law, usage, or custom to the contrary notwithstanding: And whereas the persons who from time to time have been appointed commissioners by commission under the great seal or under the half seal, by virtue of the authority of either of the herein-before recited Acts, have been commonly called "The High Court of

"Delegates": And, whereas, notwithstanding the herein-before recited Acts, the King's Majesty for the time being hath out of his royal favour occasionally granted, upon petition to him in council made for that purpose, a commission under the great seal authorising the commissioners therein named to review the judgments and decrees of the High Court of Delegates so appointed as aforesaid: And whereas it is expedient that the herein-before recited Act of the eighth year of Queen Elizabeth, and also so much of the herein-before recited Act of the twenty-fifth year of King Henry the Eighth as relates to the appeal to his Majesty in Chancery, should be repealed, and that all the powers which by virtue of either of the said Acts have or might have been enjoyed by the said High Court of Delegates should be in future exercised by his Majesty in council, and that no such commission of review as aforesaid should hereafter be granted: \* \* be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the herein-before recited Act of the Twenty-fifth Year of the Reign of King Henry the Eighth, so far as relates to any power thereby given to appeal in any case to the King's Majesty in His High Court of Chancery, and so far as the same empowers His Majesty to grant a Commission under the Great Seal authorising the Persons therein named to hear and determine such Appeals, shall, as from the First Day of February One thousand eight hundred and thirty-three, be and the same is hereby repealed.

II. And be it also enacted, That the herein-before recited Act of the Eighth Year of the Reign of Queen Elizabeth shall, as from the First Day of February One thousand eight hundred and thirty-three, be and the same is hereby repealed. \* \*

III. AND be it further enacted, that from and after the said first day of February one thousand eight hundred and thirty-three it shall be lawful to and for every person who might heretofore, by virtue of either of the said recited Acts, have appealed or made suit to his Majesty in his High Court of Chancery, to appeal or make suit to the King's Majesty, his heirs or successors, in council, within such time, in such manner, and subject to such rules, orders, and regulations for the due and more convenient proceeding, as shall seem meet and necessary, and upon such security, if any, as his Majesty, his heirs and successors, shall from time to time by order in council direct; and that the King's Majesty, his heirs and successors, in council, shall thereupon have power to proceed to hear and determine every appeal and suit so to be made by virtue of this Act, and to make all such judgments, orders, and decrees in the matter of such appeal or suit as might heretofore have been made by his Majesty's commissioners appointed by virtue of either of the herein-before recited Acts if this Act had not been passed; and that every such judgment, order, and decree so to be made by the King's Majesty, his heirs and successors, shall have such and the like force and effect in all respects whatsoever as the same respectively would have had if made and pronounced by the aforesaid High Court of Delegates; and that every such judgment, order, and decree shall be final and definitive, and that no commission shall hereafter be granted or

25 H. 8. c. 19.  
so far as relates to the Power of Appeal and to the Appointment of Delegates repealed from 1 Feb. 1833.

8 Eliz. c. 5.  
repealed from 1 Feb. 1833.

From 1 Feb. 1833 powers of the High Court of Delegates transferred to the King in council.

Judgments of King in council to be final, and no commission of review thereof to be granted.

Sect. 6.

8 Eliz. c. 5.



authorised to review any judgment or decree to be made by virtue of this Act.

Proviso for Appeals now pending, or which may be pending previous to 1 Feb. 1833.

\* \* IV. Provided always, and be it enacted, That nothing herein contained shall extend to affect any Appeal now pending, or which before the said First Day of February One thousand eight hundred and thirty-three may be pending, to his Majesty in Chancery, by virtue of either of the herein-before recited Acts, or to affect the Right of His Majesty to grant any such Commission under the Great Seal or under the

Half Seal as aforesaid, to hear and adjudicate upon any Appeal so now pending, or which may before the said First day of February One thousand eight hundred and thirty-three be pending; and that every Judgment or Decree of the said High Court of Delegates, by virtue of either of the said recited Acts, already made or hereafter to be made, in any Cause so now pending or which shall be so pending as aforesaid, shall have such and the like Force and Effect in all respects as if this Act had not been passed. \* \*

### 3 & 4 VICT. CHAPTER LXXXVI.

AN Act for better enforcing Church Discipline. [7th August 1840.]

WHEREAS the manner of proceeding in causes for the correction of clerks requires amendment: \* \* be it enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That an Act passed in the First Year of the Reign of King Henry the Seventh, intituled An Act for Bishops to punish Priests and other Religious Men for dishonest Lives, shall be repealed. \* \*

Definition of the terms "preferment," "bishop," "archbishop," and "diocese."

II. AND be it enacted, that, unless it shall otherwise appear from the context, the term "preferment," when used in this Act, shall be construed to comprehend every deanery, archdeaconry, prebend, canonry, office of minor canon, priest vicar, or vicar choral in holy orders, and every precentorship, treasurership, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church, and every mastership, wardenship, and fellowship in any collegiate church, and all benefices with cure of souls, comprehending therein all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging to or reputed to belong, or annexed or reputed to be annexed, to any church or chapel, and every curacy, lectureship, readership, chaplaincy, office, or place, which requires the discharge of any spiritual duty, and whether the same be or be not within any exempt or peculiar jurisdiction; and the word "bishop," when used in this Act, shall be construed to comprehend "archbishop"; and the word "diocese," when used in this Act, shall be construed to comprehend all places to which the jurisdiction of any bishop extends under and for the purposes of an Act passed in the second year of the reign of her present Majesty, intituled "An Act to abridge the holding of benefices in plurality, and to make better provision for the residence of the clergy."

1 & 2 Vict. c. 106.

Bishop may issue a commission of inquiry, where a clerk is charged with any offence, &c.

Notice to be previously given.

Proceedings of the commissioners.

III. AND be it enacted, that in every case of any clerk in holy orders of the United Church of England and Ireland who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal or evil report as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or, if he shall think fit, of his own mere motion, to issue a commission under his hand and seal to five persons, of whom one shall be his vicar general, or an archdeacon or rural dean within the diocese, for the purpose of making inquiry as to the grounds of such charge or report: Provided always, that notice of the intention to issue such commission under the hand of the bishop, containing an intimation of the nature of the offence, together with the names, addition, and residence of the party on whose application or motion such commission shall be about to issue, shall be sent by the bishop to the party accused fourteen days at least before such commission shall issue.

IV. AND be it enacted, that it shall be lawful for the said commissioners or any three of them to examine upon oath, or upon solemn affirmation in cases where an affirmation or declaration is allowed by law instead of an oath, which oath or affirmation or declaration respectively shall be administered by them to all witnesses who shall be tendered to them for examination as well by any party alleging the truth of the charge or report as by the party accused, and to all witnesses whom they may deem it necessary to summon for the

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purpose of fully prosecuting the inquiry and ascertaining whether there be sufficient prima facie ground for instituting further proceedings; and notice of the time when and place where every such meeting of the commissioners shall be holden shall be given in writing under the hand of one of the said commissioners to the party accused seven days at least before the meeting; and it shall be lawful for the party accused, or his agent, to attend the proceedings of the commission, and to examine any of the witnesses; and all such preliminary proceedings shall be public, unless, on the special application of the party accused, the commissioners shall direct that the same or any part thereof shall be private; and when such preliminary proceedings, whether public or private, shall have been closed, one of the said commissioners shall, after due consideration of the depositions taken before them, openly and publicly declare the opinion of the majority of the commissioners present at such inquiry, whether there be or be not sufficient prima facie ground for instituting further proceedings.

Report of the commissioners.

V. AND be it enacted, that the said commissioners or any three of them shall transmit to the bishop under their hands and seals the depositions of witnesses taken before them, and also a report of the opinion of the majority of the commissioners present at such inquiry whether or not there be sufficient prima facie ground for instituting proceedings against the party accused; and such report shall be filed in the registry of the diocese; and that if the party accused shall hold any preferment in any other diocese or dioceses, the bishop to whom the report shall be made shall transmit a copy thereof, and of the depositions, to the bishop or bishops of such other diocese or dioceses, and shall also, upon the application of the party accused, cause to be delivered to such party a copy of the said report and of the depositions, on payment of a reasonable sum for the same, not exceeding two-pence for each folio of ninety words.

Bishop may pronounce sentence, by consent, without further proceedings.

VI. AND be it enacted, that in all cases where proceedings shall have been commenced under this Act against any such clerk, it shall be lawful for the bishop of any diocese within which such clerk may hold any preferment, with the consent of such clerk and of the party complaining, if any, first obtained in writing, to pronounce, without any further proceedings, such sentence as the said bishop shall think fit, not exceeding the sentence which might be pronounced in due course of law; and all such sentences shall be good and effectual in law as if pronounced after a hearing according to the provisions of this Act, and may be enforced by the like means.

Articles and depositions to be filed.

VII. AND be it enacted, that if the commissioners shall report that there is sufficient prima facie ground for instituting proceedings, and if the bishop of any diocese within which the party accused may hold any preferment, or the party complaining, shall thereupon think fit to proceed against the party accused, articles shall be drawn up, and when approved and signed by an advocate practising in Doctors Commons, shall, together with a copy of the depositions taken by the commissioners, be filed in the registry of the diocese of such last-mentioned bishop; and any such party, or any person on his behalf, shall be entitled to inspect without fee such copies, and to require and have, on demand, from the registrar (who is hereby required to deliver the same), copies of such depositions, on payment of a reasonable sum for the same, not exceeding two-pence for each folio of ninety words.

H h



Service of copy of the articles on the party.

VIII. AND be it enacted, that a copy of the articles so filed shall be forthwith served upon the party accused by personally delivering the same to him, or by leaving the same at the residence house belonging to any preferment holden by him, or if there be no such house, then at his usual or last known place of residence; and it shall not be lawful to proceed upon any such articles until after the expiration of fourteen days after the day on which such copy shall have been so served.

Bishop may require the party to appear before him;

IX. AND be it enacted, that it shall be lawful for the said last-mentioned bishop, by writing under his hand, to require the party to appear, either in person or by his agent duly appointed, as to the said party may seem fit, before him at any place within the diocese, and at any time after the expiration of the said fourteen days, and to make answer to the said articles within such time as to the bishop shall seem reasonable; and if the party shall appear, and by his answer admit the truth of the articles, the bishop, or his commissary specially appointed for that purpose, shall forthwith proceed to pronounce sentence thereupon according to the ecclesiastical law.

and may pronounce judgment on admission.

How notices and requisitions to be served.

X. AND be it further enacted, that every notice and requisition to be given or made in pursuance of this Act shall be served on the party to whom the same respectively relate in the same manner as is hereby directed with respect to the service of a copy of the articles on the party accused.

Proceedings, on a hearing before the bishop.

XI. AND be it enacted, that if the party accused shall refuse or neglect to appear and make answer to the said articles, or shall appear and make any answer to the said articles other than an unqualified admission of the truth thereof, the bishop shall proceed to hear the cause, with the assistance of three assessors, to be nominated by the bishop, one of whom shall be an advocate who shall have practised not less than five years in the court of the archbishop of the province, or a sergeant at law, or a barrister of not less than seven years standing, and another shall be the dean of his cathedral church, or of one of his cathedral churches, or one of his archdeacons, or his chancellor; and upon the hearing of such cause the bishop shall determine the same, and pronounce sentence thereupon according to the ecclesiastical law.

Sentence of bishop to be effectual in law, &c.

XII. AND be it enacted, that all sentences which shall be pronounced by any bishop or his commissary in pursuance of this Act, shall be good and effectual in law; and such sentences may be enforced by the like means as a sentence pronounced by an ecclesiastical court of competent jurisdiction.

Bishop may send the cause to the court of appeal of the province.

XIII. PROVIDED always, and be it enacted, that it shall be lawful for the bishop of any diocese within which any such clerk shall hold any preferment, or if he hold no preferment then for the bishop of the diocese within which the offence is alleged to have been committed, in any case, if he shall think fit, either in the first instance or after the commissioners shall have reported that there is sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case by letters of request to the court of appeal of the province, to be there heard and determined according to the law and practice of such court: PROVIDED always, that the judge of the said court may and he is hereby authorized and empowered from time to time to make any order or orders of court for the purpose of expediting such suits or otherwise improving the practice of the said court, and from time to time to alter and revoke the same: PROVIDED also, that there shall be no appeal from any interlocutory decree or order not having the force or effect of a definite sentence, and thereby ending the suit in the court of appeal of the province, save by the permission of the judge of such court.

Judge of the court may make orders for expediting such suits, &c.

No appeal from interlocutory decree.

Bishop may inhibit party accused from performing services of the church, &c.

XIV. AND be it enacted, that in every case in which, from the nature of the offence charged, it shall appear to any bishop within whose diocese the party accused may hold any preferment that great scandal is likely to arise from the party accused continuing to perform the services of the church while such charge is under investigation, or that his ministration will be useless while such charge is pending, it shall be lawful for the bishop to cause a notice to be served on such party at the same time with the service of a copy of the articles aforesaid, or at any time pending any proceedings before the bishop or in any ecclesiastical court, inhibiting the said party from performing any services of the church within such diocese from and after the expiration of fourteen days from the service of such notice, and until sentence shall have been given in the said cause:

Provided that it shall be lawful for such party, being the incumbent of a benefice, within fourteen days after the service of the said notice, to nominate to the bishop any fit person or persons to perform all such services of the church during the period in which such party shall be so inhibited as aforesaid; and if the bishop shall deem the person or persons so nominated fit for the performance of such services, he shall grant his licence to him or them accordingly; or in case a fit person shall not be nominated, the bishop shall make such provision for the service of the church as to him shall seem necessary; and in all such cases it shall be lawful for the bishop to assign such stipend, not exceeding the stipend required by law for the curacy of the church belonging to the said party, nor exceeding a moiety of the net annual income of the benefice, as the said bishop may think fit, and to provide for the payment of such stipend, if necessary, by sequestration of the living: PROVIDED also, that it shall be lawful for the said bishop at any time to revoke such inhibition and licence respectively.

XV. AND be it enacted, that it shall be lawful for any party who shall think himself aggrieved by the judgment pronounced in the first instance by the bishop, or in the court of appeal of the province, to appeal from such judgment; and such appeal shall be to the archbishop, and shall be heard before the judge of the court of appeal of the province, when the cause shall have been heard and determined in the first instance by the bishop, and shall be proceeded in the said court of appeal in the same manner and subject only to the same appeal as in this Act is provided with respect to cases sent by letters of request to the said court; and the appeal shall be to the Queen in council, and shall be heard before the judicial committee of the privy council, when the cause shall have been heard and determined in the first instance in the court of the archbishop.

Appeals from judgments under this Act.

XVI. AND be it enacted, that every archbishop and bishop of the United Church of England and Ireland, who \* \* now is or at any Time hereafter \* \* shall be sworn of her Majesty's most honourable privy council, shall be a member of the judicial committee of the privy council for the purposes of every such appeal as aforesaid; and that no such appeal shall be heard before the judicial committee of the privy council unless at least one of such archbishops or bishops shall be present at the hearing thereof: PROVIDED always, that the archbishop or bishop who shall have issued the commission herein-before mentioned in any such case, or who shall have heard any such case, or who shall have sent any such case by letters of request to the court of appeal of the province, shall not sit as a member of the judicial committee on an appeal in that case.

Archbishops and bishops, members of the privy council, to be members of the judicial committee on all appeals under this Act.

XVII. And be it enacted, that it shall be lawful in any such inquiry for any three or more of the commissioners, or in any such proceeding for the bishop, or for any assessor of the bishop, or for the judge of the court of appeal of the province, to require the attendance of such witnesses, and the production of such deeds, evidences, or writings, as may be necessary; and such bishop, judge, assessor, and commissioners respectively shall have the same power for these purposes as now belong to the Consistorial Court and to the Court of Arches respectively.

Attendance of witnesses, and production of papers, &c. may be compelled.

XVIII. AND be it enacted, that every witness who shall be examined in pursuance of this Act shall give his or her evidence upon oath, or upon solemn affirmation in cases where an affirmation is allowed by law instead of an oath, which oath or affirmation respectively shall be administered by the judge of the court or his surrogate, or by the assessor of the bishop, or by commissioner; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury.

Witnesses to be examined on oath, and to be liable to punishment for perjury.

XIX. PROVIDED always, and be it enacted, that nothing herein-before contained shall prevent any person from instituting as voluntary promoter, or from prosecuting, in such form and manner and in such court as he might have done before the passing of this Act, any suit which, though in form criminal, shall have the effect of asserting, ascertaining, or establishing any civil right, nor to prevent the archbishop of the province from citing any such clerk before him in cases and under circumstances in and under which such archbishop might, before the passing of this Act, cite such clerk under and in pursuance of a Statute passed in the twenty-third year of the reign of King Henry the Eighth, intituled "An Act that no person shall be cited

Provisions of Act not to interfere with persons instituting suits to establish a civil right, nor with proceedings under 23 Hen. 8. c. 9.



“ out of the diocese where he or she dwelleth, except “ in certain cases.”

Suits to be commenced within two years, except in cases of previous conviction in a court of common law.

XX. AND be it enacted, that every suit or proceeding against any such clerk in holy orders for any offence against the laws ecclesiastical shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards: Provided always, that whenever any such suit or proceeding shall be brought in respect of an offence for which a conviction shall have been obtained in any court of common law, such suit or proceeding may be brought against the person convicted at any time within six calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence in respect of which such suit or proceeding shall be so brought.

27 Geo. 3. c. 44. not to apply to commencement of suits against spiritual persons for certain offences.

XXI. AND be it declared and enacted, that the Act passed in the twenty-seventh year of the reign of his late Majesty King George the Third, intituled “ An Act to prevent frivolous and vexatious suits in the “ ecclesiastical courts,” does not and shall not extend to the time of the commencement of suits or proceedings against spiritual persons for any of the offences in the said Act named.

Power of archbishops and bishops under this Act as to exempt or peculiar places or preferments.

XXII. AND be it enacted, that every archbishop and bishop within the limit of whose province or diocese respectively any place, district, or preferment, exempt or peculiar, shall be locally situate, shall, except as herein otherwise provided, have, use, and exercise all the powers and authorities necessary for the due execution by them respectively of the provisions and purposes of this Act, and for enforcing the same with regard thereto respectively, as such archbishop and bishop respectively would have used and exercised, if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop; and where any place, district, or preferment, exempt or peculiar, shall be locally situate within the limits of more than one province or diocese, or where the same or any of them, shall be locally situate between the limits of the two provinces, or between the limits of any two or more dioceses, the archbishop or bishop

of the cathedral church to whose province or diocese the cathedral, collegiate, or other church or chapel of the place, district, or preferment respectively shall be nearest in local situation, shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of this Act, and enforcing the same with regard thereto respectively, as such archbishop or bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively; and the same, for all the purposes of this Act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; provided that the peculiars belonging to any archbishoprick or bishoprick, though locally situate in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this Act as for all other purposes of ecclesiastical jurisdiction.

XXIII. AND be it enacted, that no criminal suit or proceeding against a clerk in holy orders of the United Church of England and Ireland for any offence against the laws ecclesiastical shall be instituted in any ecclesiastical court otherwise than is herein-before enacted or provided.

No suit to be instituted except as herein provided.

XXIV. AND be it enacted, that when any act, save sending a case by letters of request to the court of appeal of the province, is to be done or any authority is to be exercised by a bishop under this Act, such Act shall be done or authority exercised by the archbishop of the province in all cases where the bishop who would otherwise do the act or exercise the authority is the patron of any preferment held by the party accused.

If a bishop is patron of the preferment held by accused party, archbishop to act in his stead.

XXV. AND be it enacted, that nothing in this Act contained shall be construed to affect any authority over the clergy of their respective provinces or dioceses which the archbishops or bishops of England and Wales may now according to law exercise personally and without process in court; and that nothing herein contained shall extend to Ireland.

Saving of powers of archbishop and bishop.

Act not to extend to Ireland.

\* \* XXVI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament. \* \*

Act may be amended.

## 23 & 24 VICT. CHAPTER XXXII.

AN ACT to abolish the jurisdiction of the Ecclesiastical Courts in Ireland in Cases of Defamation, and in England and Ireland in certain Cases of Brawling. [3d July 1860.]

WHEREAS it is expedient to abolish the jurisdiction of the ecclesiastical courts of England and Ireland over persons not in holy orders in suits for brawling, and to abolish the jurisdiction of the ecclesiastical courts of Ireland in suits for defamation, as hath already been done with respect to the like jurisdiction in England: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same:

Abolition of jurisdiction of ecclesiastical courts in suits for brawling against persons not in holy orders, &c.

1. [1] THAT it shall not be lawful for any ecclesiastical court in England or Ireland to entertain or adjudicate upon any suit or cause of brawling commenced after the passing of this Act against any person not being in holy orders, nor shall it be lawful for any ecclesiastical court in Ireland to entertain or adjudicate upon any suit or cause of defamation commenced as aforesaid; and in the case of every person committed or to be committed to gaol under any writ de contumace capiendo, issued in consequence of any proceedings before any ecclesiastical court in any cause or suit for defamation of character, or, where such person is not in holy orders, for brawling, the judge of the ecclesiastical court before whom such proceedings shall have been had shall make an order upon the officer in whose custody such person shall be at any time hereafter for discharging such person out of custody; and such officer shall on the receipt of such order forthwith discharge such person; and it shall not be necessary for such person to take any oath of future obedience to his or her ordinary: Provided

always, that such order shall not be made unless the costs lawfully incurred in any such suit shall have been previously paid into the registry of such ecclesiastical court; \* \* provided further, that where any such suit for Brawling or Defamation has been commenced before the passing of this Act, and final Judgment has not been given thereupon, or where final Judgment has been given, but the Defendant has not been taken under a Writ De contumace capiendo pursuant to such Judgment, the Court, upon Payment by the Defendant of the Costs of Suit incurred by the Promoter of the Office of the Judge to the Time of the passing of this Act, shall stay all further Proceedings therein. \* \*

Order for Discharge not to be made until costs lawfully incurred are paid.

2. ANY person who shall be guilty of riotous, violent, or indecent behaviour in England or Ireland in any cathedral church, parish or district church or chapel of the Church of England and Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the provisions of the eighty-first chapter of the statute passed in the session of Parliament of the eighteenth and nineteenth years of the reign of Her present Majesty, intituled “ An Act to amend the law concerning the certifying and registering of places of religious worship in “ England,” whether during the celebration of divine service or at any other time, or in any churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorized to preach therein, or any clergyman in holy orders ministering or celebrating any sacrament, or any divine service, rite, or office, in any cathedral, church, or chapel, or in any churchyard or burial ground, shall, on conviction thereof before two justices of the peace, be liable to a penalty

Penalty on persons guilty of riotous behaviour, &c., in churches, chapels certified under 18 & 19 Vict. c. 81., &c., churchyards, or burial grounds.

[1 Section 1 is rep., so far as it relates to ecclesiastical courts in Ireland, Stat. Law Rev. Act, 1875.]



of not more than five pounds for every such offence, or may, if the justices before whom he shall be convicted think fit, instead of being subjected to any pecuniary penalty, be committed to prison for any time not exceeding two months.

Offenders may be apprehended, &c. immediately after offence committed.

3. EVERY such offender in the premises after the said misdemeanor so committed immediately and forthwith may be apprehended and taken by any constable or churchwarden of the parish or place where the said offence shall be committed, and taken before a justice of the peace of the county or place where the said offence shall have been so committed, to be dealt with according to law.

Persons aggrieved may appeal against conviction.

4. ANY person convicted as aforesaid who shall think himself aggrieved by such conviction may forthwith appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county, riding, division, city, or borough wherein the cause of complaint shall have arisen; provided such person shall enter into a recognizance with two sufficient sureties before the convicting justices, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such recognizance being entered into, the justices shall libe-

rate such person, and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and, in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

\* \* V. The Act Chapter Four of the Statute passed in the Session of Parliament of the Fifth and Sixth Years of the Reign of Edward the Sixth is hereby repealed, so far as relates to Persons not in Holy Orders. \* \*

Chapter 4 of Statute 5 & 6 Edward VI. repealed.

6. NOTHING herein-before contained shall be taken to repeal or alter the statute passed in the second session of the first year of the reign of Queen Mary, chapter three; or the statute passed in the first year of the reign of Queen Elizabeth, chapter two; or the eighteenth section [1] of the statute passed in the first year of the reign of King William and Queen Mary, chapter eighteen.

Saving of 1 Mar. sess. 2. c. 8. 1 Eliz. c. 2., and 1 Will. & Mar. c. 18. s. 18. [1]

7. PROVIDED also, that nothing herein contained shall limit, restrain, or abolish the power possessed by the ordinary over the fabric of any church or over the churchyard or burial ground connected therewith.

Act not to limit power of ordinary over fabrics of churches, &c.

### 34 & 35 VICT. CHAPTER XL.

AN ACT to alter and regulate the Proceedings and Powers of the Primitive Wesleyan Methodist Society of Ireland, and for other purposes. [13th July 1871.]

WHEREAS a Society was established in the year one thousand eight hundred and eighteen, under the name of "The Primitive Wesleyan Methodist Society of Ireland" (herein-after called the Society), for the purpose of carrying out the general principles of the "Methodist Constitution," as agreed upon at a meeting of the representatives of that Society in Ireland, held on the fifth and sixth days of January of that year:

And whereas the Society has become possessed of certain stocks, funds, and securities for the use and benefit of the Society:

And whereas the Society are also possessed of certain preaching-houses, schools, and other buildings, tenements, and hereditaments, situate in Dublin and other parts of Ireland:

And whereas the Society are desirous of obtaining powers to invest moneys now belonging or which hereafter may belong to them on mortgage of real estate or other securities:

And whereas the Society are desirous of obtaining power to alter and regulate the proceedings and powers of the Society, and to carry on their work in co-operation or in conjunction with any Church or religious body or association in Ireland:

And whereas the Society since its formation has been governed by a Conference generally held in the month of June in every year:

And whereas in the month of November one thousand eight hundred and seventy, at a Conference specially summoned, it was determined, amongst other things, to seek powers to alter or amend the general principles or constitution of the Society, and the President of the Society was unanimously authorised to apply to Parliament for that purpose:

And whereas it is expedient that the Society should have power to hold property on certain trusts, and to alter from time to time if necessary the design, discipline, laws, rules, and regulations of the Society, and that the Society should be enabled to unite or co-operate with any Church or religious body or association in Ireland:

And whereas the purposes aforesaid cannot be effected without the aid and authority of Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation of terms.

1. The following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject matter or context repugnant to such construction:

The words "the Society" mean the Primitive Wesleyan Methodist Society of Ireland:

The words "the Conference" mean a Conference of the Society composed of the president or vice-president for the time being, and secretary, the travelling preachers in full connexion, and one steward or leader from each circuit or mission, elected annually by the stewards and leaders to represent the circuit at such Conference, present and voting thereat:

The words "vote of the Conference" mean for all the purposes of this Act a vote agreed to by not less than two thirds of the members of the Conference, composed as aforesaid, who shall be present and shall vote at such meeting.

2. In citing this Act in other Acts of Parliament, and in legal instruments and proceedings, it shall be sufficient to use the expression "The Primitive Wesleyan Methodist Society of Ireland Act, 1871."

Short title.

3. From and after the passing of this Act, all the property, real and personal, at the date of such passing held upon any trust or trusts for the Society, and all other the property, real and personal, belonging or in anywise appertaining to or appropriated to the use of the Society, or connected therewith respectively, shall be held upon the trusts and to and for the uses, intents, and purposes following; that is to say,

Property to be held upon trusts following.

Upon such trusts and to and for such uses, intents, and purposes, and subject to such powers and regulations, as the same property, real and personal, or any part thereof, is now respectively held, or subject to such trusts, powers, and regulations as may hereafter be directed, limited, or appointed by a vote of the Conference, provided that such trusts, uses, intents, and purposes, powers and regulations, shall not be inconsistent with or in violation of this Act, or of any other law of this realm.

Upon same trusts as at present until altered and then upon such trusts as the Conference may direct.

4. Nothing in this Act contained shall authorise any alteration in the "doctrine" of the Society, as set forth in Part 2. of the "General Principles of the Methodist Constitution," (a copy of which is set forth in the schedule to this Act annexed,) but the design and discipline, as set forth in Parts 1. and 3. of the said General Principles, and the laws, rules and regulations by or under which the qualification and election or appointment of a president, vice-president, secretary, treasurers, travelling preachers, local preachers, stewards, leaders, visitors of the sick, trustees, and other officers, and the admission or cesser of members of the Society, have been regulated, and the Conference, the district meetings, leaders' meetings, band meetings, classes, and

Doctrine of Society to remain unaltered; rules, &c. to remain unaltered till changed by vote of the Conference.

[1] This is section 15 in the Statutes of the Realm.



other meetings, and the business thereof, and the rights, powers, and functions of such president, vice-president, secretary, treasurers, travelling preachers, local preachers, stewards, leaders, visitors of the sick, trustees, and other officers as aforesaid, or of any conference or meeting, have been constituted, regulated, managed, conducted, or defined, and generally the existing design, discipline, laws, rules, and regulations of the Society, shall, after the passing of this Act, be and continue to be the design, discipline, laws, rules, and regulations of the Society, except so far as the same may be amended, altered, or repealed, or any new design, discipline, laws, rules, or regulations may be hereafter made according to the practice or rule existing in the Society before the passing of this Act, or by any vote of the Conference as herein-after provided.

Design, discipline, rules, &c. of the Society may be changed by vote of the Conference.

5. All or any of the matters affecting the design, discipline, laws, rules, and regulations which now are or shall for the time being be the existing design, discipline, laws, rules, and regulations of the Society, may be amended, altered, or repealed, and any new design, discipline, laws, rules, and regulations of the Society, and for the management of the property thereof, and the carrying on of the affairs and business thereof, may be made in such manner and to such extent as may from time to time be hereafter determined on by a vote of the Conference; provided only that such amendments, alterations, and such new design, discipline, laws, rules, and regulations, be not repugnant to this Act, or to the laws or statutes of the realm.

Design, discipline, rules, &c. to be binding and enforceable as to property in the temporal courts.

6. The design, discipline, laws, rules, and regulations shall be deemed to be binding on the members for the time being of the Society in the same manner as if such members had mutually contracted and agreed to abide by and observe the same, and shall be capable of being enforced in the temporal courts in relation to any property in the same manner and to the same extent as if such property had been expressly given, granted, or conveyed upon trust to be held, occupied, and enjoyed by persons who should observe and keep and be in all respects bound by the said design, discipline, laws, rules, and regulations.

Union with any Church or religious body in Ireland by vote of Conference.

7. The Society may, by a vote of the Conference, unite or co-operate with any Church or religious body or association in Ireland, upon such terms and conditions as the Society by a vote of the Conference may determine.

Conference may appoint trustees to hold property.

8. The Society shall be at liberty by a vote of the Conference to appoint any number of persons of their body, not exceeding fifteen, as trustees of the Society, with power to hold property, real and personal, for the Society, or any district, circuit, or station thereof, and shall and may in like manner, by vote, from time to time discharge any trustee so appointed, and appoint a new trustee or new trustees in the place of any trustee so discharged, or of any trustee dying, or declining, or becoming incapable of acting, and shall and may, by a like vote, make any rules or settle any plan for the appointment of any such new trustee or trustees: Provided always, that no person or persons shall be deemed to be a trustee or trustees within the meaning of this Act until the resolution upon which such vote of the Conference shall be taken, certified under the hand of the president and signed by such trustees or trustee, shall have been enrolled in the High Court of Chancery in Ireland.

Property to vest in a trustee or trustees so appointed.

9. In the event of the Society, by a vote of the Conference as aforesaid, appointing a trustee or trustees for the Society to hold all or any portion of the property, real and personal, belonging or in anywise appertaining to or appropriated to the use of the Society, or of any circuit, district, or station of the Society, or connected therewith, then all the said property, real and personal, affected or intended to be affected by such vote shall thereupon vest in such trustee or trustees as may from time to time be appointed in accordance with such vote, and be and continue to be held by such trustee or trustees upon such trust as may be decided by the vote of the Conference.

Power to invest funds on mortgage.

10. The moneys for the time being belonging to the Society may from time to time be invested, in the names of the trustees of the Society for the time being, on mortgage of any manors, messuages, lands, tenements, or hereditaments of a clear and indefeasible estate of inheritance, in fee simple, or fee farm in Ireland, free from incumbrances except quitrents and other small annual payments, or held upon any lease or leases for any term or terms of years, of which not less than sixty years shall be unexpired, or in the pur-

chase of stock in the public funds of Great Britain or Ireland, or Bank of Ireland Stock, Parliamentary Securities, or any other securities upon which trustees may for the time being, according to the Statutes of the Realm, or the rules of the Court of Chancery in Ireland, be entitled to lend or invest trust funds, and the moneys or any part of the moneys so invested may be called in, and the payment of the same, and of the interest thereof, or any part thereof respectively, may be required and enforced when thought advisable so to do on the part of the Society: Provided always, that no money shall be so invested on mortgage unless, for the further security for the repayment of the money invested, and the interest thereof, the mortgage contain a power of sale, exercisable by or on behalf of the Society.

11. Provided always, that in every case in which the equity of redemption of the premises comprised in any such security shall become liable to foreclosure, or otherwise barred or released, the same shall be thenceforth held in trust to be sold and converted into money, and shall be sold accordingly; and if any decree shall be made in any suit for the purpose of redeeming or enforcing such security, such decree shall direct a sale (in default of redemption) and not a foreclosure of such premises.

Proviso for cases in which the equity of redemption of the premises may be barred or released.

12. All the costs, charges, and expenses preliminary to, and of and incidental to, the preparing, applying for, obtaining, and passing of this Act shall be paid by the Society.

How expenses of Act to be paid.

#### SCHEDULE to which the foregoing Act refers.

*General Principles of the Methodist Constitution agreed upon in Dublin at a Meeting of Representatives held on the 5th and 6th January 1818, and fully agreed to and ratified at a General Meeting convened at Clones, on the 21st instant, to re-establish Methodism on its original basis, agreeably to Primitive Wesleyan Methodism.*

Q. 1. What is requisite to form and cement a Christian society?

A. Unity of Design, Unity of Doctrine, and Uniformity of Discipline.

#### 1ST.—OF DESIGN.

Q. 2. What is the Design of the Methodist Society?

A. It is thus expressed by Mr. Wesley:—"A body of people, who, being of no sect or party, are friends to all parties; and endeavour to forward all in heart religion, in the knowledge and love of God and Man."

Q. 3. In what point of view, then, does the Methodist Society consider itself?

A. Not as an independent Church, nor its preachers as independent ministers; preachers and people conjointly constitute a purely Religious Society to build each other up; to enjoy the blessings of Christian fellowship, and to promote, by precept and example, the knowledge and practice of vital godliness.

Q. 4. Does this imply a distinct and separate communion, in celebrating the two Christian Ordinances, Baptism and the Lord's Supper?

A. By no means; as the members of the Methodist Society may belong to external visible Churches established under different forms; each member is left at perfect liberty to partake of those Ordinances in the communion to which he or she respectively belongs.

Q. 5. Does not the Methodist Society profess to belong to the Church of England?

A. Yes, as a body; for they originally emanated from the Church of England; and the Rev. John Wesley, the venerable founder of the Connection, made a declaration of similar import within less than a year preceding his decease, viz.:—"I declare once more, that I live and die a member of the Church of England; and that none who regard my judgment or advice will ever separate from it." (See Arminian Magazine, for April 1790.) This, however, is not now to be understood as interfering with the right of private judgment, in cases where education or prejudices attach members to other Established Churches.

#### 2ND.—OF DOCTRINE.

Q. 6. What is the foundation of the Methodist Doctrines?

A. The canonical Scriptures of the Old and New Testament.



Q. 7. Wherein consists the Unity of the Methodist Doctrine?

A. In teaching and enforcing those doctrines only which are contained in the Scriptures, as taught and explained in the writings of the Rev. John Wesley, and Rev. John Fletcher, particularly Mr. Wesley's notes on the Old and New Testament, his eight volumes of Sermons, his appeals, and the doctrinal parts of the Arminian Magazine as maintained by him, and published to the period of his decease, also Mr. Fletcher's Checks and letters, published by Mr. Wesley.

### 3RD.—OF DISCIPLINE.

Q. 8. How is the discipline of the Methodist body to be regulated so as to be uniform throughout the Connection?

A. By the general principles and regulations laid down in Mr. Wesley's larger Minutes, as published by himself in the year 1789.

Q. 9. What shall we do in order to preserve Methodism in its original state in Ireland, as at the period of Mr. Wesley's decease in March 1791?

A. By a recurrence to original principles, re-establish Methodism in its primitive simplicity, appointing to each their duty and station.

Q. 10. What are the gradations of station in the Methodist Connection?

A. First,—Preachers.  
Second,—Stewards and Leaders.  
Third,—Private Members.

Q. 11. What is the office of a Methodist Preacher?

A. His sole vocation as called and sent out by the Methodist Connection, is to declare a free, universal, and everlasting Gospel, which is glad tidings to all people, through the merits of Christ alone, agreeably to that declaration of St. Paul—*I am sent not to baptize, but to preach the Gospel.*

Q. 12. Is this view of his calling agreeable to Mr. Wesley's opinion, and that discipline which he established?

A. Mr. Wesley declared it to be so, both from the pulpit and the press; in full corroboration of this truth, we refer particularly to a Sermon of his, preached in Cork, on Heb. v. 4, and afterwards published by himself in the Arminian Magazine, for June 1790, in which discourse he has clearly shown that the office of a priest is totally distinct and separate from the office of a preacher or expounder of God's Word and Will, sometimes called a prophet.

Q. 13. Has not Mr. Wesley's exposition of that text, Heb. v. and 4, been controverted?

A. It has been controverted by some of the preachers, who wished to break in upon the Scriptural and uniform plan of Mr. Wesley's discipline. But we adopt the principles there laid down, and receive Preachers under this view of their office only.

Q. 14. What is the office of a Leader?

A. To take the spiritual charge of a certain number of persons committed to his care, in what is called a class: to meet them collectively every week; and, if possible, see each member of his class weekly. He is regularly to attend the leader's meeting, in places where such meeting is established. He is to be present at every quarterly meeting, if not unavoidably prevented; and assist the Preachers of the Circuit in every matter relative to the good government of the Society, according to our declared fundamental principles.

Q. 15. What is the qualification for a Leader?

A. He is to be a person of approved and upright conversation and conduct; and one that enjoys the happiness of possessing sound Christian experience. And before he is fully permitted to the office and privileges of a leader, he is to subscribe in a book, to be provided for the purpose, in each Circuit, to these fundamental principles, which are herein laid down as a basis of the Methodist Constitution, according to original principles.

Q. 16. What is the duty of a Steward?

A. To take the general charge of the temporal concerns of the Society or Circuit in which he is appointed, particularly of all the money transactions, both receipts and disbursements, in all which he is to act faithfully, as one who is to give a strict account to God.

Q. 17. What is the duty of Private Members?

A. To abide in their station, according to the rules of the Society, published by Mr. Wesley.

Q. 18. To whom is confided the government of the Connection?

A. To the Conference.

Q. 19. Did Mr. Wesley establish a Conference?

A. He did; a conference of preachers directed by himself, received and sent out according to the principles maintained by him in his exposition of Heb. v. 4 before-mentioned.

Q. 20. Why do we separate from the majority of the Conference, claiming to be the successors of that established by Mr. Wesley?

A. Because they have changed the discipline established by Mr. Wesley. Not content with the honourable office of being preachers of the Gospel simply, they have assumed to themselves the priestly office, by administering the Ordinances of Baptism and the Lord's Supper, without appointment or ordination, against Mr. Wesley's express opinion on the subject.

Q. 21. Has it not been urged that Mr. Wesley himself ordained some Preachers to administer the Ordinances; and has not this been resorted to as an apology by the preachers, for their late innovation?

A. Supposing it to be true, that Mr. Wesley was prevailed upon to select for such an appointment, it is the fullest confirmation, that his decided opinion was against the administration of the Ordinances by the preachers generally; therefore, this attempt to shelter themselves under the sanction of Mr. Wesley's authority is perfectly nugatory, and carries its own refutation.

Q. 22. In consequence of the loose principles of discipline set afloat in supporting the late innovation, the very great irregularity has been maintained by some, of the right of a private celebration of the Ordinances amongst themselves; what is our opinion of such practice?

A. We consider the principle as calculated to produce confusion in the Church of God, and the practice to bring the Ordinances into contempt; we therefore judge, that persons concerned in such irregular administration shall be excluded from our Society.

Q. 23. As the Conference is the governing body, who constitute the Conference?

A. All the travelling Preachers in the Connection, and one Steward or Leader from each Circuit, to be annually elected by the Stewards and Leaders convened at a quarterly meeting.

Q. 24. Have all the members of Conference so constituted an equal voice in the concerns of the body?

A. During the examination of the Preachers' characters, Preachers only are to be present and decide. During the appointments to the Circuits, all the members may be present and give their opinion; but the Preachers are to decide. During every other business or discussion, all the members may sit, speak, and vote without distinction.

Q. 25. How is the stationing of Preachers to be regulated?

A. By a stationing committee, to be elected by Conference annually, to consist of an equal number of Preachers and Representatives, who, in the committee, are all to have an equal voice in making the arrangement, which is to be submitted to Conference, as under the foregoing question and answer.

Q. 26. What is the regulation respecting the receiving of new Preachers?

A. No person can be received as a Preacher who does not come recommended by the Stewards and Leaders of the Circuit to which he belongs, assembled at a quarterly meeting.

Q. 27. Why is one Steward or Leader from each Circuit appointed to sit in Conference?

A. To assist by their counsel and advice in matters of vital importance to the Connection; and to take the labour and responsibility of managing the financial concerns, in order to relieve the Preachers from the weight of temporal matters, which might interfere with their usefulness.

Q. 28. Is this any deviation from Primitive Methodism?

A. We conceive not. It is both rational and Scriptural; and the principle of an open Conference is admitted by Mr. Wesley, in the first formation of Methodism.\*

Q. 29. What shall be done to prevent the evil which might arise in future, by an attempted encroachment on these fundamental principles?

A. Let every member of the Conference, as a quali-

\* See Mr. Wesley's Minutes for the year 1746.



fication to sit, speak, or vote therein, declare under his hand, in a book to be Provided for the purpose, his unfeigned assent and consent thereto; and his sincere determination to abide in strict conformity to them, as long as he shall continue a member of the Conference, and let all the General Acts, and specific regulations of Conference, proceed accordingly.

Q. 30. Can any further barrier be placed to resist and suppress a future spirit of innovation?

A. As we uniformly declare, that our one object is to constitute a Religious Society, and preserve harmony

among ourselves, and not to erect ourselves into a new Church, we do hereby pronounce our judgment, that if any member of the Conference shall propose any resolution subversive of this principle, or opposed to the Design, Doctrine, or Discipline herein contained, he is unworthy to be a member of the Conference, and thereby excludes himself.

Agreed to unanimously, and signed for and in the behalf of the Assembled Representatives.

ADAM AVERELL, DUBLIN.  
SAMUEL MOORHEAD, CLONES.

### 37 & 38 VICT. CHAPTER LXXXV.

AN ACT for the better administration of the Laws respecting the regulation of Public Worship. [7th August 1874.]

WHEREAS it is expedient that in certain cases further regulations should be made for the administration of the laws relating to the performance of divine service according to the use of the Church of England:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as The Public Worship Regulation Act, 1874.

2. This Act shall come into operation on the first day of July one thousand eight hundred and seventy-five, except where expressly herein-after provided.

3. This Act shall extend to that part of the United Kingdom called England, to the Channel Islands, and the Isle of Man.

4. Proceedings taken under this Act shall not be deemed to be such proceedings as are mentioned in the Act of the third and fourth year of the reign of Her Majesty, chapter eighty-six, section twenty-three.

5. Nothing in this Act contained, save as herein expressly provided, shall be construed to affect or repeal any jurisdiction which may now be in force for the due administration of ecclesiastical law.

6. In this Act the following terms shall, if not inconsistent with the context, be thus interpreted—

The term "bishop" means the archbishop or bishop of the diocese in which the church or burial ground is situate to which a representation relates:

The term "Book of Common Prayer" means the book annexed to the Act of the fourteenth year of the reign of King Charles the Second, chapter four, intitled "The Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David, pointed as they are to be sung or said in churches; and the form or manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons;" together with such alterations as have from time to time been or may hereafter be made in the said book by lawful authority:

The term "burial ground" means any churchyard, cemetery, or burial ground, or the part of any cemetery or burial ground, in which, at the burial of any corpse therein, the order for the burial of the dead contained in the Book of Common Prayer is directed by law to be used:

The term "church" means any church, chapel, or place of public worship in which the incumbent is by law or by the terms of license from the bishop required to conduct divine service according to the Book of Common Prayer:

The term "diocese" means the diocese in which the church or burial ground is situate to which a representation relates, and comprehends all places which are situate within the limits of such diocese:

The term "incumbent" means the person or persons in holy orders legally responsible for the due performance of divine service in any church, or of the order for the burial of the dead in any burial ground:

The term "parish" means any parish, ecclesiastical district, chapelry, or place, over which any incumbent has the exclusive cure of souls:

The term "parishioner" means a male person of full age who before making any representation under

this Act has transmitted to the bishop under his hand the declaration contained in Schedule (A.) to this Act, and who has, and for one year next before taking any proceeding under this Act has had, his usual place of abode in the parish within which the church or burial ground is situate, or for the use of which the burial ground is legally provided, to which the representation relates:

The term "barrister-at-law" shall in the Isle of Man include advocate:

The term "rules and orders" means the rules and orders framed under the provisions of this Act.

7. The Archbishop of Canterbury and the Archbishop of York may, but subject to the approval of Her Majesty to be signified under Her Sign Manual, appoint from time to time a barrister-at-law who has been in actual practice for ten years, or a person who has been a judge of one of the Superior Courts of Law or Equity, or of any court to which the jurisdiction of any such court has been or may hereafter be transferred by authority of Parliament, to be, during good behaviour, a judge of the Provincial Courts of Canterbury and York, herein-after called the judge.

If the said archbishops shall not, within six months after the passing of this Act, or within six months after the occurrence of any vacancy in the office, appoint the said judge, Her Majesty may by Letters Patent appoint some person, qualified as aforesaid, to be such judge.

Whensoever a vacancy shall occur in the office of official principal of the Arches Court of Canterbury, the judge shall become ex officio such official principal, and all proceedings thereafter taken before the judge in relation to matters arising within the province of Canterbury shall be deemed to be taken in the Arches Court of Canterbury; and whensoever a vacancy shall occur in the office of official principal or auditor of the Chancery Court of York, the judge shall become ex officio such official principal or auditor, and all proceedings thereafter taken before the judge in relation to matters arising within the province of York shall be deemed to be taken in the Chancery Court of York; and whensoever a vacancy shall occur in the office of Master of the Faculties to the Archbishop of Canterbury, such judge shall become ex officio such Master of the Faculties.

Every person appointed to be a judge under this Act shall be a member of the Church of England, and shall, before entering on his office, sign the declaration in Schedule (A.) to this Act; and if at any time any such judge shall cease to be a member of the Church, his office shall thereupon be vacant.

This section shall come into operation immediately after the passing of this Act.

8. If the archdeacon of the archdeaconry, or a churchwarden of the parish, or any three parishioners of the parish, within which archdeaconry or parish any church or burial ground is situate, or for the use of any part of which any burial ground is legally provided, or in case of cathedral or collegiate churches, any three inhabitants of the diocese, being male persons of full age, who have signed and transmitted to the bishop under their hands the declaration contained in Schedule (A.) under this Act, and who have, and for one year next before taking any proceeding under this Act have had, their usual place of abode in the diocese within which the cathedral or collegiate church is situated, shall be of opinion,—

(1.) That in such church any alteration in or addition to the fabric, ornaments, or furniture thereof has been made without lawful authority, or that any

"Barrister-at-law."

"Rules and orders."

Appointment and duties of judge.

Representation by archdeacon, churchwarden, parishioners or inhabitants of diocese.



decoration forbidden by law has been introduced into such church; or,

- (2.) That the incumbent has within the preceding twelve months used or permitted to be used in such church or burial ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture; or,
- (3.) That the incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance, in such church or burial ground, of the services, rites, and ceremonies ordered by the said book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from such services, rites, and ceremonies,—

such archdeacon, churchwarden, parishioners, or such inhabitants of the diocese, may, if he or they think fit, represent the same to the bishop, by sending to the bishop a form, as contained in Schedule (B.) to this Act, duly filled up and signed, and accompanied by a declaration made by him or them under the Act of the fifth and sixth year of the reign of King William the Fourth, chapter sixty-two, affirming the truth of the statements contained in the representation: Provided, that no proceedings shall be taken under this Act as regards any alteration in or addition to the fabric of a church if such alteration or addition has been completed five years before the commencement of such proceedings.

Proceedings on representation.

9. Unless the bishop shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken on the representation, (in which case he shall state in writing the reason for his opinion, and such statement shall be deposited in the registry of the diocese, and a copy thereof shall forthwith be transmitted to the person or some one of the persons who shall have made the representation, and to the person complained of,) he shall within twenty-one days after receiving the representation transmit a copy thereof to the person complained of, and shall require such person, and also the person making the representation, to state in writing within twenty-one days whether they are willing to submit to the directions of the bishop touching the matter of the said representation, without appeal; and if they shall state their willingness to submit to the directions of the bishop without appeal, the bishop shall forthwith proceed to hear the matter of the representation in such manner as he shall think fit, and shall pronounce such judgment and issue such monition (if any) as he may think proper, and no appeal shall lie from such judgment or monition.

Provided, that no judgment so pronounced by the bishop shall be considered as finally deciding any question of law so that it may not be again raised by other parties.

The parties may, at any time after the making of a representation to the bishop, join in stating any questions arising in such proceedings in a special case signed by a barrister-at-law for the opinion of the judge, and the parties after signing and transmitting the same to the bishop may require it to be transmitted to the judge for hearing, and the judge shall hear and determine the question or questions arising thereon, and any judgment pronounced by the bishop shall be in conformity with such determination.

If the person making the representation and the person complained of shall not, within the time aforesaid, state their willingness to submit to the directions of the bishop, the bishop shall forthwith transmit the representation in the mode prescribed by the rules and orders to the archbishop of the province, and the archbishop shall forthwith require the judge to hear the matter of the representation at any place within the diocese or province, or in London or Westminster.

The judge shall give not less than twenty-eight days notice to the parties of the time and place at which he will proceed to hear the matter of the said representation. The judge before proceeding to give such notice shall require from the person making the representation such security for costs as the judge may think proper, such security to be given in the manner prescribed by the rules and orders.

The person complained of shall within twenty-one days after such notice transmit to the judge, and to the person making the representation, a succinct answer to the representation, and in default of such answer he shall be deemed to have denied the truth or relevancy of the representation.

In all proceedings before the judge under this Act the evidence shall be given *viva voce*, in open court, and upon oath; and the judge shall have the powers of a court of record, and may require and enforce the attendance of witnesses, and the production of evidences, books, or writings, in the like manner as a judge of one of the superior courts of law or equity, or of any court to which the jurisdiction of any such court has been or may hereafter be transferred by authority of Parliament.

Unless the parties shall both agree that the evidence shall be taken down by a short-hand writer, and that a special case shall not be stated, the judge shall state the facts proved before him in the form of a special case, similar to a special case stated under the Common Law Procedure Acts, 1852-1854.

The judge shall pronounce judgment on the matter of the representation, and shall deliver to the parties, on application, and to the bishop, a copy of the special case, if any, and judgment.

The judge shall issue such monition (if any) and make such order as to costs as the judgment shall require.

Upon every judgment of the judge, or monition issued in accordance therewith, an appeal shall lie, in the form prescribed by rules and orders, to Her Majesty in Council.

The judge may, on application in any case, suspend the execution of such monition pending an appeal, if he shall think fit.

10. The registrar of the diocese, or his deputy duly appointed, shall perform such duties in relation to this Act and shall receive such fees as may be prescribed by the rules and orders.

Registrar of the diocese to perform duties under the Act.

11. In any proceedings under this Act either party may appear either by himself in person or by counsel, or by any proctor or any attorney or solicitor.

Parties may appear in person or by counsel, &c.

12. For the purpose of an appeal to Her Majesty in Council under this Act, the special case settled by the judge, or a copy of the shorthand writer's notes, as the case may be, shall be transmitted in the manner prescribed by rules and orders, and no fresh evidence shall be admitted upon appeal except by the permission of the tribunal hearing the appeal.

No fresh evidence to be admitted on appeal.

13. Obedience by an incumbent to a monition or order of the bishop or judge, as the case may be, shall be enforced, if necessary, in the manner prescribed by rules and orders, by an order inhibiting the incumbent from performing any service of the church or otherwise exercising the cure of souls within the diocese for a term not exceeding three months; provided that at the expiration of such term the inhibition shall not be relaxed until the incumbent shall, by writing under his hand, in the form prescribed by the rules and orders, undertake to pay due obedience to such monition or order, or to the part thereof which shall not have been annulled; provided that if such inhibition shall remain in force for more than three years from the date of the issuing of the monition, or from the final determination of an appeal therefrom whichever shall last happen, or if a second inhibition in regard to the same monition shall be issued within three years from the relaxation of an inhibition, any benefice or other ecclesiastical preferment held by the incumbent in the parish in which the church or burial ground is situate, or for the use of which the burial ground is legally provided, in relation to which church or burial ground such monition has been issued as aforesaid, shall thereupon become void, unless the bishop shall, for some special reason stated by him in writing, postpone for a period not exceeding three months the date at which, unless such inhibition be relaxed, such benefice or other ecclesiastical preferment shall become void as aforesaid; and upon any such avoidance it shall be lawful for the patron of such benefice or other ecclesiastical preferment to appoint, present, collate, or nominate to the same as if such incumbent were dead; and the provisions contained in the Act of the first and second year of the reign of Her Majesty, chapter one hundred and six, section fifty-eight, in reference to notice to the patron and as to lapse, shall be applicable to any benefice or other ecclesiastical preferment avoided under this Act; and it shall not be lawful for the patron at any time to appoint, present, collate, or nominate to such benefice or such other ecclesiastical preferment the incumbent by whom the same was avoided under this Act.

Inhibition of incumbent.

The bishop may, during such inhibition, unless he is satisfied that due provision is otherwise made for the



spiritual charge of the parish, make due provision for the service of the church and the cure of souls, and it shall be lawful for the bishop to raise the sum required from time to time for such provision by sequestration of the profits of such benefice or other ecclesiastical preferment.

Any question as to whether a monition or order given or issued after proceedings before the bishop or judge, as the case may be, has or has not been obeyed shall be determined by the bishop or the judge, and any proceedings to enforce obedience to such monition or order shall be taken by direction of the judge.

14. It shall not be necessary to obtain a faculty from the ordinary in order lawfully to obey any monition issued under this Act, and if the judge shall direct in any monition that a faculty shall be applied for, such fees only shall be paid for such faculty as may be directed by the rules and orders; provided that nothing in this Act contained shall be construed to limit or control the discretion vested by law in the ordinary as to the grant or refusal of a faculty: Provided also, that a faculty shall, on application, be granted if unopposed, on payment of such a fee (not exceeding two guineas) as shall be prescribed by the rules and orders, in respect of any alteration in or addition to the fabric of any church, or in respect of any ornaments or furniture, not being contrary to law, made or existing in any church, at the time of the passing of this Act.

15. All notices and other documents directed to be given to any person under this Act shall be given in the manner prescribed by rules and orders.

16. If any bishop shall be patron of the benefice or of any ecclesiastical preferment held by the incumbent respecting whom a representation shall have been made, or shall be unable from illness to discharge any of the duties imposed upon him by this Act in regard to any representation, the archbishop of the province shall act in the place of such bishop in all matters thereafter arising in relation to such representation; and if any archbishop shall be patron of the benefice or of any ecclesiastical preferment held by the incumbent respecting whom a representation shall have been made, or shall be unable from illness to discharge any of the duties imposed upon him by this Act in regard to any representation, Her Majesty may, by Her Sign Manual, appoint an archbishop or bishop to act in the place of such archbishop in all matters thereafter arising in relation to such representation.

17. The duties appointed under this Act to be performed by the bishop of the diocese shall in the case of a cathedral or collegiate church be performed by the visitor thereof.

If any complaint shall be made concerning the fabric, ornaments, furniture, or decorations of a cathedral or collegiate church, the person complained of shall be the dean and chapter of such cathedral or collegiate church, and in the event of obedience not being rendered to a monition relating to the fabric, ornaments, furniture, or decorations of such cathedral or collegiate church, the visitor or the judge, as the case may be, shall have power to carry into effect the directions contained in such monition, and, if necessary, to raise the sum required to defray the cost thereof by sequestration of the profits of the preferments held in such cathedral or collegiate church by the dean and chapter thereof.

If any complaint shall be made concerning the ornaments of the minister in a cathedral or collegiate church, or as to the observance therein of the directions contained in the Book of Common Prayer, relating to the performance of the services, rites, and ceremonies ordered by the said book, or as to any alleged addition to, alteration of, or omission from such services, rites, and ceremonies in such cathedral or collegiate church, the person complained of shall be the clerk in holy orders alleged to have offended in the matter complained of; and the visitor or the judge, as the case may be,

in the event of obedience not being rendered to a monition, shall have the same power as to inhibition, and the preferment held in such cathedral or collegiate church by the person complained of shall be subject to the same conditions as to avoidance, notice, and lapse, and as to any subsequent appointment, presentation, collation, or nomination thereto, and as to due provision being made for the performance of the duties of such person, as are contained in this Act concerning an incumbent to whom a monition has been issued, and concerning any benefice or other ecclesiastical preferment held by such incumbent.

18. When a sentence has been pronounced by consent, or any suit or proceeding has been commenced against any incumbent under the Act of the third and fourth year of the reign of Her Majesty, chapter eighty-six, he shall not be liable to proceedings under this Act in respect of the same matter; and no incumbent proceeded against under this Act shall be liable to proceedings under the said Act of the third and fourth year of the reign of Her Majesty, in respect of any matter upon which judgment has been pronounced under this Act.

19. Her Majesty may by Order in Council, at any time either before or after the commencement of this Act, by and with the advice of the Lord High Chancellor, the Lord Chief Justice of England, the judge to be appointed under this Act, and the archbishops and bishops who are members of Her Majesty's Privy Council, or any two of the said persons, one of them being the Lord High Chancellor or the Lord Chief Justice of England, cause rules and orders to be made for regulating the procedure and settling the fees to be taken in proceedings under this Act, so far as the same may not be expressly regulated by this Act, and from time to time alter or amend such rules and orders. All rules and orders made in pursuance of this section shall be laid before each House of Parliament within forty days after the same are made, if Parliament is then sitting, or if not, within forty days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said Houses within the next subsequent forty days on which the House shall have sat praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rules and orders so annulled shall thenceforth become void, without prejudice to the validity of any proceedings already taken under the same.

#### SCHEDULES referred to in the foregoing Act.

##### SCHEDULE (A.)

I do hereby solemnly declare that I am a member of the Church of England as by law established.

Witness my hand this                      day of                      .

##### SCHEDULE (B.)

"PUBLIC WORSHIP REGULATION ACT, 1874."

To the Right Rev. Father in God, A., by Divine permission Lord Bishop of B.

I, [We,] C.D. Archdeacon of the archdeaconry of                      , [or a churchwarden or three parishioners of the parish of E.,] in your Lordship's diocese, do hereby represent that [the person or persons complained of] has or have [state the matter to be represented; if more than one, then under separate heads].

Dated this                      day of                      18 .  
(Signed) C.D.

Faculty not necessary in certain cases.

Service of notices.

Substitute for bishop when patron, or in case of illness.

Provisions relating to cathedral or collegiate church.

Limitation proceedings against incumbe

Rules for settling procedure and fees under this Act.



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ECCLESIASTICAL COURTS COMMISSION.

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REPORT OF THE COMMISSIONERS  
APPOINTED TO INQUIRE INTO  
THE CONSTITUTION AND WORKING OF  
THE ECCLESIASTICAL COURTS,

WITH

MINUTES OF PROCEEDINGS, EVIDENCE, RETURNS,  
ABSTRACTS, HISTORICAL AND OTHER  
APPENDICES, &c.

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**Vol. I.**

CONTAINING

The Commission.—The Report.—Minutes of Proceedings.—  
Historical Appendices.

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Presented to both Houses of Parliament by Command of Her Majesty.

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